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May 2, 2003

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING—MAY 2, 2003

PRESENT:

RAYMOND P. HAYDEN
THOMAS S. RUE
LIZABETH L. BURRELL
WARREN J. MARWEDEL
PATRICK J. BONNER
PHILIP A. BERNS
WILLIAM R. DORSEY, III

and the following 193 members:

Stephen A. Agus	Dennis L. Bryant
James W. Bartlett, III	Phillip A. Buhler
R. Glenn Bauer	Frederick F. Burgess, Jr.
William E. Bell	Raymond J. Burke, Jr.
Michael K. Bell	Francis X. Byrn
George D. Benjamin	Christopher E. Carey
Helen M. Benzie	William E. Cassidy
Philip A. Berns	Edward V. Cattell, Jr.
Richard C. Binzley	Michael G. Chalos
William G. Birkhead	George F. Chandler, III
Robert B. Birthisel	Joseph D. Cheavens
S. Scott Bluestein	Robert G. Clyne
Lawrence D. Bradley, Jr.	Michael Marks Cohen
Lawrence B. Brennan	Timothy J. Conner
Philip S. Brooks, Jr.	William R. Conner, III
Charles D. Brown	James Patrick Cooney
Richard H. Brown, Jr.	Richard A. Corwin

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James M. Craig
Rae M. Crowe
Blane H. Crutchfield
Dr. John C. Daidola
Bruce P. Dalcher
Edward Dangler
Christopher O. Davis
A. Robert Degen
Frank P. DeGiulio
Charles G. DeLeo
Charles S. Donovan
Susan M. Dorgan
William R. Dorsey, III
John A. Edington
John M. Elsley
Craig S. English
David Farrell, Jr.
Anthony R. Filiato
Robert B. Fisher, Jr.
Vincent J. Foley
Joshua S. Force
Prof. Robert Force
James E. Forde
George D. Gabel, Jr.
Michael A. Garcia
Michael B. Gardner
Gene B. George
Alexander M. Giles
Robert S. Glenn, Jr.
Andrew J. Goldstein
David B. Goldstein
Joseph G. Grasso
Carl D. Gray
Donald C. Greenman
John E. Grimmer
David S. Grown
Robert J. Gruendel
Paul D. Hardy
Kevin J. Hartmann

Walter C. Hartridge
George W. Healy, III
Ann Michele Higgins
Chester D. Hooper
Anne D. Hopkins
Robert B. Hopkins
Mary C. Hubbard
Aileen M. Jenner
John Paul Jones
Lawrence J. Kahn
Kimbly A. Kearney
Marshall P. Keating
Allan R. Kelley
Donald J. Kennedy
John D. Kimball
Bruce A. King
Peter Martin Klein
Sandra L. Knapp
Jean E. Knudsen
Michael J. Kucharski
Jan M. Kuylenstierna
LeRoy Lambert
Charles R. Lane
Lars Forsberg
J. Dwight Le Blanc, III
J. Dwight Le Blanc, Jr.
Edward F. Lebreton, III
Richard M. Leslie
Francis V. Liantonio, Jr.
John T. Lillis, Jr.
Todd D. Lochner
Herbert M. Lord
Timothy R. Lord
Geoffrey A. Losee
Henry C. Lucas, III
Guy E.C. Maitland
Patrick J. Maloney
Gerard J. Mangone
David Marewsky

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Matthew A. Marion	Howard W. Roth
Marc G. Marling	John M. Ryan
David W. Martowski	Michael J. Ryan
Robert K. Marzik	John P. Schaffer
Faust Mattioni	John Scott Scherban
Michael B. McCauley	Scott H. Schley
Howard M. McCormack	Charles E. Schmidt
Marion E. McDaniel, Jr.	Gordon D. Schreck
Prof. Samuel P. Menefee	Sam Senders
James E. Mercante	David T. Sharpe
Dennis Minichello	Louis P. Sheinbaum
Benjamin Allston Moore, Jr.	James T. Shirley, Jr.
James F. Moseley	David F. Sipple
James F. Moseley, Jr.	David W. Skeen
Thomas J. Muzyka	Michael A. Snyder
Katharine F. Newman	Howard J. Sobczak
David A. Nourse	Jonathan S. Spencer
George W. Nowell	Dennis T. Stone
Eugene J. O'Connor	Norman C. Sullivan, Jr.
Ashton R. O'Dwyer, Jr.	Daniel A. Tadros
David R. Owen	Prof. William Tetley
Glen T. Oxton	C. Peter Theut
Patricia L. Parker	Melvin J. Tublin
Robert B. Parrish	Joseph P. Tynan
Bruce G. Paulsen	Alan Van Praag
John M. Pennekamp	John P. Vayda
J. Ridgely Porter, III	David N. Ventker
Edward J. Powers	Kenneth H. Volk
Lennard K. Rambusch	Thomas J. Wagner
William A. Ransom, III	Rahul Wanchoo
Mary Elisa Reeves	Daniel R. Warman
Stephen V. Rible	Harold K. Watson
J. Ramon Rivera-Morales	William H. Welte
Kenneth E. Roberts	Wes Wheeler
Antonia J. Rodriguez	
Ivan M. Rodriguez	

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and the following 12 guests:

Jose Annicchiarico
Katharina V. Beeke
Janet Crawford
Jerome DeSentenac
Daniele Dion
Nigel Frawley
Robert Haight
Sean Harington
Sangoo Jun
Calvin M. Lederer
Matthew Mianchi
Janet W. Maushai

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PROCEEDINGS

MR. HAYDEN: Good morning, ladies and gentlemen.

We appreciate the difficulties that the members have in appearing here at the business meeting at this early hour.

We know that many of you had late night meetings, and were engaged in entertaining clients, and we know that it is really an onerous task to be here by 9:30, but thank you for coming.

We would appreciate cell phones being turned off while you are in the meeting room here this morning. It is very distracting to the presenters at the time when cell phones go off.

I might mention to you as a point of information that Past President Paulson's book, "Out of the Fog," on the Andrea Doria-Stockholm collision, has now been published and is available in various book stores.

I would also like to give a special welcome to some distinguished visitors who are present at this morning's meeting.

We have with us Mr. Cal Lederer, acting Chief Counsel United States Coast Guard. We welcome you.

(Applause)

MR. HAYDEN: We are especially grateful to the Coast Guard and the members of their legal staff for allowing our members to work with you in the implementation of rules and regulations, and allowing our members to know the effects and to have the right of input in the Rules and Regulations from our clients' positions.

In addition, we have with us Sean Harrington, President of the Canadian Maritime Law Association.

(Applause.)

MR. HAYDEN: David Martowski, President of the Society of Maritime Arbitrators.

(Applause.)

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MR. HAYDEN: We have our distinguished honorable honorary member, Bill Tetley, he is here somewhere.

Professor Tetley, where are you?

(Applause.)

MR. HAYDEN: And one last person, if I am not overlooking anybody, is Jim Craig, President of the AIMU.

(Applause.)

MR. HAYDEN: We have additional members of the Canadian Maritime Law Association with us today.

I know Nigel Frawley is here, and I'm not sure who else is here, but welcome. We are glad you are with us.

I would be remiss if I didn't thank the chairs of the various committees for all their work over the past year. We have five of them who will be completing their term, I believe it's actually six of them who will be completing their term at the conclusion of this meeting. And I think we owe them a particular word of thanks on behalf of the Association.

Gordon Schreck, who has been Chairman of the Carrier Security Committee, will be retiring, so to speak, and Bruce Paulsen will assume the chair.

Richard Brown, who has chaired the Classification Society Committee, is being replaced by Bob Clyne.

Dr. Sam Menefee, who has completed his four years as Chair of the International Law of the Sea Committee, is being replaced by Larry Brennan.

The Young Lawyers Chair, Josh Force of New Orleans, is being replaced by Larry Kahn.

Michael Marks Cohen of the Comité Maritime International Committee is being replaced by Chris Davis.

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The last one is Glen Oxton, Electronic Communication Commerce Committee, being replaced by John Paul Jones.

A special thank you to each of those retiring chairs, and thank you for working with the officers and the board.

(Applause.)

MR. HAYDEN: Four members of our board will also be retiring today, having completed their terms. That's Jim Carroll of New Orleans, Mary Elisa Reeves of Philadelphia, Allen Van Praag of New York and Jim Whitehead of Seattle.

Their advice and counsel to the officers and their work with the board has been exemplary. And I thank them for their service and hope that they will continue, and we expect them to continue to support and provide us with their advice as things go.

May we proceed now with the secretary's report.

Mr. Marwedel.

MR. MARWEDEL: Good morning Mr. President, members and guests.

First of all, I would like to remind all of you to fill out the attendance cards that are located on the table out in the hallway. Also, if you are going to make a presentation, please give your business card to the court reporter. And, if you are going to be submitting written reports, send them to me via E-mail or on disk in Word format.

Since our meeting last fall, the Officers met in Washington, D.C. in January, and the Board of Directors met in New Orleans on March 18th, in conjunction with the Tulane Maritime Seminar, as well as in New York yesterday.

In Washington the Officers had lunch with several members of various governmental legal departments that impact the maritime industry and maritime law. There were legal representatives from the Coast Guard, State, Navy, Commerce and Justice.

On behalf of the Board, we would like to thank Glen Goodier, and the members of the MLA group down in New Orleans, for making the arrangements and their kind hospitality when we were there.

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The MLA has continued its international participation in various forums, and several presentations have been made to the Board.

Past President Chet Hooper reported that the MLA working group attended the CMI meeting in London in February of this year to prepare for the UNCITRAL meeting, as well as the follow-up meeting here in New York during the last week of March and the first week of April.

It appears that the European members may be agreeable to the door-to-door concept, with certain provisos, and that the Europeans may also be a little more agreeable with accommodating some of the American views in an attempt to get the Americans to adopt any resulting convention.

There will be another meeting in October in Vienna. You can get additional information on the MLA website, as well as the UNCITRAL website.

President Hayden reported that the CMI Colloquium, or seminar, will be held in Bordeaux, France on June 11th through the 13th. In attendance will be President Hayden, Tom Rue, Liz Burrell, Howard McCormack and George Chandler. The subject matter discussed will include electronic trade, general average and place of refuge.

There will be a formal CMI plenary session in Vancouver, Canada from May 30th to June 5, 2004.

Past President Howard McCormack reported on the CMI Working Group on general average. Mr. McCormack is the only American on the CMI Working Group. He reported that the cargo side of the International Union of Marine Insurance is seeking to make changes to reduce cargo's responsibility in the event of a general average event. Cargo argues it does not want to be responsible for ships not properly maintained where cargoes are often more valuable than the ship itself. Mr. McCormack has posted a very extensive paper on the MLA website.

Immediate Past President Bill Dorsey reported on the activities of the IMO Legal Committee. At the fall meeting held in London last October, the committee finalized the amendments to the Athens Convention.

The Legal Committee was also meeting this week in London considering issues of place of refuge, wreck removal, the SUA Convention

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and provisions of financial security regarding seafarers' rights. Mr. Dorsey said the U.S. Government is not certain which Federal agency will take the lead in adopting the protocol to the Athens Convention. It is felt at some point the Government will attempt to adopt the protocol. In the past the MLA has taken a position opposing the protocol and will have to review its position should the Government attempt to have it adopted.

Bill Dorsey also reported on the Supreme Court's decision in *Sprietsma v. Mercury Marine*. He indicated the Court's nine-to-zero decision in favor of plaintiff, and against the engine manufacturer, did not consider any maritime law issues. The Court ruled that although the engine manufacturer asserted that maritime law governed the case, because the argument was not raised below, it was waived. He pointed out there were no MLA attorneys involved in the briefings filed in the lower court.

Past President Jim Moseley, the MLA's delegate to the ABA House of Delegates, reported on the activities of the ABA and its upcoming meeting in San Francisco this August. Of particular interest was the House of Delegates Resolution 302 regarding Senate Bill 413 on cases involving asbestosis and the issue concerning a threshold test for any claim. Mr. Moseley reported on the passing of the ABA's new model code and recommends that members monitor their state bar activities to see if any of the model code provisions have been adopted in their state. Mr. Moseley also reported on the status of the ABA's contemplated review of the Foreign Sovereign Immunities Act, and the possible review of uniformity principles in marine insurance.

President Hayden reported on a memo from David Farrell, Chair of the Committee on Fisheries, regarding maritime liens attaching to fishing permits. Recent case law has held that maritime liens may attach to fishing permits and intangible fishing histories. The MLA Fisheries Committee is concerned that this unduly complicates fishing vessel financing, as well as vessel and permit purchase and sales transactions. President Hayden asked the Chair of the Fisheries Committee and Chair of the Marine Finance Committee to study the issue further and report back to the board.

Second Vice President Liz Burrell, Chair of the special *ad hoc* committee working on MLA membership and participation in MLA activities, reported on the status of her Committee work to date.

She reported that her Committee conducted membership meetings across the country to survey the membership on how the MLA meets the

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current needs of the membership in light of the changing maritime industry and related practice of law. While the committee is still gathering and analyzing information, there is a preliminary consensus that economic issues, involving time and cost, and social issues, involving two working spouses, have had a profound impact on many bar and legal associations, not only the MLA.

The board spent a large amount of its time listening to her presentation and discussing the issues raised, and Ms. Burrell will be reporting further on that later on in today's meeting.

The Board of Directors passed two resolutions.

In March, the board passed a resolution thanking Samuel Gainsburgh, of New Orleans, and Charles Lugenbuhl, of New Orleans, for their contributions to the maritime law program at Tulane.

Yesterday the board passed a resolution to recognize Past President John Simms, now deceased, for his contributions to the MLA and for his contributions as a lawyer and as a person.

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

MR. HAYDEN: Do I hear a second?

A VOICE: Second.

MR. HAYDEN: All in favor?

(A chorus of ayes.)

MR. HAYDEN: Any opposition?

(No response.)

MR. HAYDEN: So moved.

Thank you, Mr. Marwedel.

Next we will have a report from our Treasurer, Mr. Bonner.

MR. BONNER: Thank you, Mr. President.

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Members and guests, currently we have assets of about \$245,000, which is roughly about \$6,000 more than we had last year.

At this time our dues collections are going well, and I think the Association will continue to have the resources to support our programs and publications. The largest item in our budget is publications. And at the recent brown bag lunches there was almost universal approval for these publications. On the brown bag lunches, as the Treasurer, I think they were a resounding success primarily because they didn't cost us a cent.

Regarding the publications, we made great strides with our website and most of the publications are available on the website, probably a lot sooner than you would receive them in the mail.

And with this, there was some sentiment expressed to do away with the written publications, and only have them on the website. We have decided against this completely at this time. The publications will continue to be mailed out to you, unless the member tells the MLA, no, I don't want to get them anymore in the mail, and I'm going to opt just to receive them on the website. If so, you will get an E-mail from our website saying the following publications are up now.

Now, it's much cheaper to send E-mail than printing and mailing. And as Treasurer, I would be happy, whoever wants to opt out, I would love you, but I have to confess that personally I still get them in the mail because I like the feel of the book and if you want to do that, that's fine.

This concludes my report, and I move it's adoption.

MR. HAYDEN: Do I hear a second?

MS. BURRELL: Second.

MR. HAYDEN: All in favor?

(A chorus of ayes.)

MR. HAYDEN: Motion passes.

Thank you, Mr. Bonner.

Mr. Berns, Membership Secretary's report, please.

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MR. BERNS: Mr. President, members and guests, you had commented about the difficulty of members being here early this morning after meeting all their clients last night. Picture this, the difficulty in trying to get up and get people to fly you off an aircraft carrier to get you back here this morning and then trying to check my flight suit downstairs. That didn't work.

(Laughter.)

MR. BERNS: At the March 18, 2003 Board meeting, nine associates and two judicial members were added to the membership. Thus, as of April 22, 2003, the membership totals 3,147. I will give you the more specific numbers at the end of the report.

Proctor admissions. At the May 1, 2003 Board meeting, eight members applied for and were elected to proctor membership status. Kevin Beauchamp Smith, J. Ridgley-Porter III, Keith S. Brais. Michael Keith Eaves, Tia Welch-Maerz, David Weil, Lawrence J. Kahn, H. Edwin Anderson, III.

Also, on May 1, 2003, 22 lawyers were approved for associate membership. William Ryan Acomb, Anthony N. Banker, J. David Banner, Robert E. Lee, Emilio G. Boehringer, Philip L. Curcio, Eric D. Garza, Steven S. Heinrichs, Lieutenant Commander Elizabeth P. Jones, William M. Kelleher, Quinn James Logensberger, Jedd S. Malish, Kimberly I. Miller, Douglas E. Ruschman, Frederick J. Carr, Mark T. Cefalu, Mia C. Perachiotti-Germak, Lynn L. Krieger, Laura A. Scales, Max Lee Kelly, Galin G. Luk, Brian F. Madden.

Nonlawyer members. Three applicants were approved for nonlawyer membership. Christine Crawford, Craig McGinnes, John K. Weber.

Also reinstated as a member was Commander Steven D. Poulin of the U.S. Coast Guard.

Also, as reported at the March 18, 2003, Board meeting, and again reported today, I regret to advise that since the last general meeting of the Association that we have learned of the death of following members:

James M. Leonard of Huntington, New York.
Edward J Heine, Jr. of New York.
Richard H. Sommer of Montville, New Jersey.
James W. Crabtree of Charlotte, North Carolina.

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Robert J. Williams of Garden City, New York.
Steven D. Johnson, Jr. of Metairie, Louisiana.

Insofar as the directory report, we are on schedule for the membership listings, as previously reported, and changes have been continuously made as reported to us. Web changes in many instances have been made the same day of submission. If I receive an E-mail with an address or name change, what have you, we have been able to get them in immediately. We are presently working on revising the history.

Also, former President Bill Dorsey has submitted a listing of the organizations with which the MLA participates, including a short description of the relationship and its purpose.

May 16th basically remains the last date for submission of the names of elected officers and board members, appointed committee and sub committee chairs and vice chairs.

As a reminder, the printed directory has a change of address form or any other change you need in the front of the volume. I never thought I would say it, having given up my abacus reluctantly, but the preferred submission is if you would send it to me by E-mail so that I can then transmit to it our representative in Buffalo for the immediate changes to be made. And we appreciate it if you do let us know as soon as you notice a change.

I would also recommend, this is difficult for you to understand, but we do make errors. I couldn't understand that myself— would you please check your listing to make sure it's accurate. Also, the problem is that most of you here have given us the information, but if you have not given us your E-mail address or you would like some additional stuff, also please forward that so we can make that change.

With the approval of the Board of the nomination of eight associates who achieved proctor status, the admission of 22 associates, the reinstatement of one member and election of three nonlawyers, all as presented above, the Association is now constituted as follows:

Ex officio, 11. Honorary, 4. Judicial, 146. Academic, 58. Proctors, 1,535. Associates, 1,199. Nonlawyers, 220. Total 3,173.

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Summation re membership: Nominations of nonlawyers who are active in the maritime industry, who would be assets to the Association are encouraged. As provided in the bylaws, Section 204, Eligibility for Nonlawyer Membership.

“Any person who is a resident of the United States, has not been admitted to the practice of law, and has rendered distinguished service in the advancement of the maritime law or its administration, may be eligible for nonlawyer membership.”

“A proposal for nonlawyer membership shall be submitted to the president in writing by two proctor members.”

“Nonlawyer membership shall terminate when a nonlawyer member ceases to be a resident of the United States.”

“No nonlawyer member shall be elected when the nonlawyer members would thereby exceed ten percent of the total membership of the Association.”

Further, nomination of more, and I put quotes around it, “inland” attorneys practicing admiralty or maritime law related “rivers,” towage, *et cetera*, and attorneys practicing fishing law is also encouraged.

As a side note, we are not looking for numbers, we are obviously looking for quality, members who would be assets and workers for the Association.

That constitutes my report. And I submit it for acceptance, Mr. President.

MR. HAYDEN: Do I hear a second?

MS. BURRELL: Second.

MR. HAYDEN: All in favor?

(A chorus of ayes.)

MR. HAYDEN: Hearing no opposition, your report is approved.

May we stand for a minute of silence in memory of those who have passed away since our last report.

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(A moment of silence observed.)

MR. HAYDEN: Thank you.

As I believe most of you are aware, last August we appointed a committee to look into the activities of the Association and how we could improve our services to the members, and how we could improve what we do and how we do it. Liz Burrell volunteered to chair that committee. She may not at this time wish she had volunteered, but she did. She has done a magnificent job.

It's a very difficult task to try and get everybody's opinion, and to poll the membership and see where we can be more active or do a better job, but she is working on it and I would like for her to make a report on her activities to date.

Thanks, Liz.

MS. BURRELL: Thank you very much.

In many ways this Association has always been way ahead of the curve. For example, lawyers would come to our committee meetings not only to keep themselves apprised of the general principles of maritime law, but also to learn about recent developments and potential for change, well before the acronym "CLE" had any significance.

People came to our meetings to make contacts, to get an idea of who might be a source of referrals or who could serve your clients when they needed representation elsewhere, well before the term "networking" was coined. Through these activities and many others, this Association has always been striving to serve the needs of its members in the most effective way possible.

But times have changed since many of our functions and procedures and activities have been put in place. People are under significantly more pressure to conserve both time and money so that their practices can continue to survive in challenged times. Also, our families have changed. As Warren mentioned in his report, one of the pressures that we are under is how do we manage time out of the office, especially when many families have two working spouses.

To address some of the ways in which the Association needs to respond to these changes, the new Special Committee was formed.

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Our first task has been to gather information. Our information gathering efforts include some in which I hope you all have already participated. I am referring to the brown bag luncheons throughout the country, and the opportunity to comment on a variety of topics suggested in the agenda that was (and remains) posted on the website, as well as any other topic that affects the association or it's activities.

I encourage you to continue to participate in this process, but these are not the only source of information. We are examining attendance data. We are looking at the pressures that many other Associations are experiencing. We are considering CLE requirements.

Everything, every operation, every function, every activity of the Association is open for examination, and I urge you to offer your thoughts to us if you haven't already done so.

At this point, we see a consensus developing on certain areas that need to change. But, again, it takes awhile for us to accumulate all of this data, and I don't want to anticipate any of our results. Right now, we are working very hard on analyzing what all of this information means, and how our Association should respond to contemporary forces.

I would like to note the names of our Committee members, not only to honor them for the fantastic job that they are doing but also so that you will know someone in your region to whom you may communicate your views about some issues that we may not have picked up or other factors that you feel particularly affect the practice in your area, or other matters to which the Association should respond to.

The Committee members are Pat Bonner, Forrest Booth, Bruce King, Brett Lebreton, Ray Massey, Doug Muller, Donny Radcliff, Jim Whitehead and JoAnne Zawitoski.

Working with this group is a privilege. Their dedication and insight is remarkable, but the most important thing that goes on at our meetings is that everyone listens, and with an open mind. What we are putting together is not something in which any one voice predominates or any idea is fixed. Everything really is open for examination and fair consideration by all of the members. That's a very, very rare forum.

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If you want to put your ideas into this forum, please do so. You have many opportunities, and by doing so you will allow the Association to remain ahead of the curve, serving its members best in the changed times that we all now face.

Thank you.

(Applause.)

MR. HAYDEN: Thank you, Liz.

And thank you, committee members, who have put so much time and effort into this project. I also want to thank the members who have put forth their views. They are very important, and we going to try to implement as many of the views as we can.

I think it's time that we move on to our various committee reports.

I will call upon the committee chairmen to give a report and at the same time I will note who is to give the following report so that they may be prepared. When you step forward, please give to the reporter here a copy of your business card so that it will be correct for the proceedings.

The first committee report will be given by Past President James F. Moseley on the American Bar Association Relations.

Jim.

Following him will be Robert Connor, Carriage of Goods By Sea Committee.

MR. MOSELEY: Thank your, Mr. President.

I would hope that none of the committees have brought forth the recommendation that the Bermuda Committee wear short britches to the meeting today. We do not need that.

(Laughter.)

MR. MOSELEY: I do not want to repeat what Warren Marwedel has said about my reports to the Board. However, I do want to give you an

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opportunity to look at our website, you will see where you can go to find items that the ABA has initiated and why this Association has a member of the house of delegates.

A couple of things. No. 1, asbestos. It was initiated in the ABA a resolution which went forward early March. Senator Hatch is spearheading an overview of asbestos matters. If you look at our MLA website, you can see a paragraph or two resume of that. In addition, our MLA website has the address where you can get on the Senate website and get the bill.

For about the last month Senator Hatch has had secret meetings with industry, insurers, labor organizations and so forth, They have been secret so I can't tell you what happened because nobody knows except a handful. However, the Congressional Quarterly on Monday indicated that there's a lot happening in that so far there is a trust fund, and mechanics of the trust fund are still being decided and worked on.

So it's my understanding that as of June and July this will either have passed or it will be lost in the shuffle of other matters that are coming up. So it needs your immediate attention if it pertains to you and your clients.

Secondly, there was a resolution, and this is something you can share with your partners when you get back, and associates. An ABA initiation on class actions, Rule 23 of the Federal Rules, is apparently going forward. Just about two weeks ago it was amended. It is not available yet on our website, but it will be in the next couple of weeks. So while class actions are not in the forefront of every maritime case, it is certainly something in the legal world that more maritime lawyers are litigating.

Thirdly, there is an organization that some of you may be familiar with, it has more initials than any other group that I have heard. It's called the NCCUSL. That is a National Conference of Commissioners on Uniform State Laws.

They submitted something to the ABA. I probably got a foot of letters, about 150 per day e-mails from every general counsel in the world on something this alphabet soup had presented. After everybody read all of this stuff, the committee was very wise and withdrew their suggestion for ABA. But if you are interested in it, it's the Uniform Computer Information Act. I don't think it will ever see the light of day again.

Lastly, this same group, the National Conference, is submitting, to the ABA that marine insurance should be the subject of somebody's study and

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we will keep looking at that. My guess is if they think that the Uniform Computer Information Act was a controversial matter, wait until they get hold of marine insurance. So we will keep monitoring you on that. As far as I know to date, there is no interest of anyone in the marine insurance industry to go into that area.

So, Mr. President, that concludes my report.

We will get everything on the website as soon as we can.

Thank you for allowing me to participate.

MR. HAYDEN: Thank you, Mr. Moseley, for your continuing good work on behalf of the Association.

Next will be the report by Mr. Connor on the Carriage of Goods By Sea.

He will be followed by, I believe, it will be Chet Hooper on the CMI UNCITRAL Convention on Transport Law.

I don't believe Mr. Sturley is there, so Mr. Hooper will be next.

Thank you.

MR. CONNOR: Good morning.

Mr. President, members of the Association.

Our committee met Wednesday morning. We had a good session getting updated, and Chet will tell you all about that, on how the working group and UNCITRAL is doing. I should say I'm cautiously optimistic. There seems to be movement.

One of the reasons our Committee discusses it all the time is that it is probably one of the most important things to us, it gives us a chance to give some feedback to the members of the U.S. delegation. Mary Helen Carlson, who is the Chairman from the State Department, wasn't able to attend this time, but we know that the feedback will get back to her. She has asked for input especially from the marine insurance industry, from shippers, from consignees, just to get an idea of where we stand.

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As I said the last time, and will continue to say, the rest of the world is looking to the United States to take some sort of lead in this action. Again, the world does not want to find out that they spent ten years putting together a treaty and the United States says thank you, but we will do it on our own again. We have a history of doing that. We don't want to do it this time. And certainly it's in all of our, as well as our clients' best interests, to move ahead on this and reach a compromise that we can all live with. So we will continue to discuss it.

When we meet in Bermuda, those of you who are fortunate enough to have shorts and be able to come, we will be discussing a new draft which will be out for the October UNCITRAL meeting, and we will make that a CLE session of a couple of hours, and hopefully your states will give you credit for it.

One last thing. At our meeting we did discuss two recent cases that last week the Supreme Court asked the Solicitor General for an opinion on. I don't know where it will go. We are not recommending anything to the Association, but certainly it's interesting to hear that the Supreme Court does remember that COGSA and maritime law exist.

That's my report. I would yield to Mr. Hooper at this point to give you the details.

Thank you.

MR. HAYDEN: Thank you much, Mr. Connor.

Following Mr. Hooper will be Gordon Schreck, Carrier Security.

MR. HOOPER: Thank you Mr. President.

In 2002, in April we met for two weeks in New York at the U.N. Headquarters. We then met in Vienna for a week in October. We alternate between Vienna and New York. We had a CMI working group meeting at the request of UNCITRAL in London earlier this spring or winter, and we met in UNCITRAL for two weeks, the last week of March, the first week of April back at U.N. Headquarters. We will go back, to the dismay of Pat Bonner, to Vienna this fall for two weeks. We are getting closer.

It was an interesting atmosphere because we were meeting at the U.N. Headquarters at the time the Iraq war started. And we didn't have any

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feeling of antagonism or politics in our meeting. In fact, one of my neighbors works for the secretariat of the U.N. and she walked through our meeting room and other meeting rooms and said that ours was markedly different.

It was interesting that we were all listening to each other, and basically all the delegates were willing to change their positions reasonably to accommodate one another. When we started this process a year ago, we had a lot of people arguing that this treaty should be limited to port to port. At the end of this session practically everyone agreed that we had to go door to door, which was what we want to do.

Basically, I think we are going to argue for a U.S. position on scope, and I think we will probably go through UNCITRAL. It will probably apply the treaty door to door, it will govern contracting carriers and maritime performing parties, but not inland performing parties, I will explain that later, and that it will apply uniformly, with one exception.

And, as you probably all know, the network system versus uniform application, the Europeans want the CMR to govern any damage which occurs on the road in Europe. And I think the political reality is that we are going to have the CMR govern everyone, from contracting carriers and performing parties for that aspect of the transportation.

Only the instrument will govern the ocean part. The instrument will govern inland in the United States for suits between cargo and the contracting party, but not between cargo and the railroad or the trucks. They are happy to go off on tort.

Now, the performing parties. The instrument will probably not create a cause of action against performing parties, except maritime performing parties, and it will not attempt to prohibit a suit against performing parties.

By "performing parties" we mean anyone other than the contracting carrier who helps perform the carriage.

By maritime performing parties we mean anyone within the port to port period. So that a stevedore would be a maritime performing party. A terminal and perhaps a watching service would be a performing party. Trucks and trains would not be, they would be inland performing parties.

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That's about the scope as we see it now. I could go into detail and put everyone to sleep, but we will continue this exercise.

We have made a lot of comments in the last three meetings at UNCITRAL. The Secretariat of UNCITRAL has made notes of all those comments, has printed her notes, we have all gone over them. The secretariat is now tasked with the job of going through the instrument and modifying the instrument according to the comments we have all made and the consensus that has been reached.

The UNCITRAL working group does not take votes. It just sort of rules by consensus, and the chairman will announce what the chairman thinks the consensus is.

Our U.S. delegation is made up by Mary Helen Carlson of the Legal Advisors Office of the State Department. She is the head of the delegation. We also have Ned Sommer, International Council of MARAD and Steve Miller, not a lawyer, but he is in the Transportation Department of the Department of State. We have Michael Sturley, who is the prime advisor to the Department of State for this project.

Michael, as you know, is the reporter who drafted our MLA COGSA and was the common law drafter of the CMI projects. So he has played a large part, which will probably help sell his next book.

We also have World Council of Shipping in and NIT League.

The American Association of Railroads has applied and has been granted NGO status in UNCITRAL. So they speak their own mind.

Our object, or the State Department's object, is to get everyone out of the woodwork who might come down and try to vote against this or persuade one-third of the United States Senate to vote against it when we show up some day and ask the Senate for its advice and consent.

So if you have any comments or questions, please see me or E-mail me.

Thanks.

MR. HAYDEN: Thank you very much, Mr. Hooper.

Carrier Security, Gordon Schreck.

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He will be followed by Richard Brown, the Classification Society.

MR. SCHRECK: Thank you, Mr. President.

The Carrier Security Committee met yesterday, May 1st, with eight members and seven guests in attendance.

The primary focus of our discussion was the still-evolving regulatory scheme pertaining to vessel security issues. The U.S. Maritime Transportation Security Act of 2002 ("MTSA") has been enacted, but regulations implementing this legislation are still in the works. In the meantime, the Coast Guard has published a non-mandatory "guidance" on ship security which may be found in its Navigation and Inspection Circular 10-02.

Likewise, the new International Ship and Port Facility Security Code ("ISPS") was adopted by the IMO in December. Its provisions will come into force on July 1, 2004, by way of an amendment to Chapter XI of SOLAS ("Special Measures to Enhance Maritime Safety"). This new security code, which will be applicable to virtually all cargo and passenger vessels trading internationally, is also still evolving. It will require, among other things, that vessels undertake a ship security assessment, develop a ship security plan, appoint a ship security officer, and obtain an international ship security certificate to be issued by a "recognized security organization". Those recognized security organizations are also yet unidentified, but evolving. Regulatory details of both the U.S. Maritime Transportation Security Act and the new SOLAS security code, as I say, are ongoing, and our Committee is going to be closely monitoring what will likely be very significant developments in this area over the next six months.

On the INS front, we discussed the impact which the recent reorganization of that agency is likely to have on crew member visa and detention issues. Effective March 1st of this year, as you know, the INS ceased to exist. Those issues, related to the arrival of alien crew members in the United States, are now being assumed by the new Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, both of which are part of the new Department of Homeland Security.

Since 9/11, crew visa issues have become an increasingly difficult problem for ship operators calling in U.S. ports. It is hoped that some relief will be afforded with the passage of the Visa Reform Act, which is presently before Congress.

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Our Committee also discussed challenges posed by the U.S. Customs Container Security Initiative, including the operational impact of the 24-hour manifesting requirement now in place.

Finally, there was discussion of the U.S. Coast Guard's SARS initiative. This initiative requires pre-arrival notification of crew member illness indicative of SARS symptoms, pursuant to the U.S. Public Health Service foreign quarantine regulations, which actually have been on the books for many years. If you want to take a look at that, it's found in 42 CFR, Part 71.

Finally, as retiring chair of the Carrier Security Committee, I wish to thank my Vice Chair, Bruce Paulsen, who will be assuming my job in a very challenging time for our committee, and for the support of my committee members over the last four years. I would also like to thank Presidents Moseley, McCormack, Dorsey and Hayden for allowing me the privilege of serving the Association in this capacity.

Thank you, Mr. President.

MR. HAYDEN: Thank you, Gordon.

Richard Brown, Classification Societies.

To be followed by Michael Marks Cohen, Comité Maritime International.

MR. BROWN: Thank you, Mr. President.

Good morning, ladies and gentlemen.

Our committee was formed originally to monitor the CMI's initiative at arranging a convention concerning class society liability. That was about eight years ago. And, as I reported, the efforts of the CMI were fruitless, because no consensus could be reached among the parties concerned. So right now the chances of such a convention are very slim indeed.

Meanwhile, tankers seem to have a habit of breaking up off the coast of Europe and spilling oil on the shores, eliciting a reaction from the European Community. The latest tanker to have that misfortune was the PRESTIGE last November.

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The result of that particular casualty, as far as the EC was concerned, is a proposed directive which, among other things, suggests the possibility of criminal liability for a number of organizations, including class societies, if they do their job with gross negligence or something of that sort. Faced with this situation, our committee at its meeting Wednesday is still hopeful that somehow there can be an international convention arranged on the subject.

At any rate, they are going to try it in the future. And I regret that I will not be chair of that committee, and I give my sympathy to Bob Clyne in whatever efforts they can make.

That's my report, Mr. President.

Thank you, very much.

MR. HAYDEN: Thank you, Mr. Brown, and for your four years of service to the organization as chairman of the committee.

Next will be Michael Marks Cohen, Chairman of the Comité International Committee.

He will be followed by Glen Oxtan, of the Electronic Communication Committee.

MR. COHEN: Thank you, Mr. President.

I dedicate this report this morning in the memory of Arthur Boal. Many of you who have been members of this Association for a long time will understand why I do that after you hear the report.

In the 19th Century, the International Law Association was formed mostly by law professors as a private organization with public law interests. And when the ILA started out, those who were interested in maritime law formed what was called the Comité Maritime Internationale. It was the International Maritime Committee of the International Law Association.

Just before the turn of the century, the CMI was split off by practicing lawyers and formed a separate organization headquartered in Antwerp to become an umbrella for national maritime law associations and a private organization with private law interests. The work was conducted by the

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CMI's working groups, which drafted standardized contract terms like the Antwerp Rules for voluntary incorporation into contracts of affreightment, as well as drafting multilateral conventions intended to so foster uniformity, like the 1910 salvage and collision conventions.

Around every four years the CMI would debate the products of its working groups in plenary conferences at which each national maritime law association had one vote. And once the CMI had agreed upon the text of a proposed treaty, the government of Belgium would invite maritime countries to adopt the treaty at a diplomatic conference in Brussels.

Our Maritime Law Association was organized, incidentally, at the meeting place of the Association of the Bar of the City of New York, specifically to participate in the work of the CMI. And not only has the MLA been strongly represented at plenary conferences of the CMI, but from the outset its members were appointed as members of the U.S. delegations which attended the diplomatic conferences called by the Belgium government.

After World War II, much of the CMI's work has been to draft instruments for use by U.N. agencies, which are then the convenors of diplomatic conferences.

And, our Association remains very active in the preparatory work of the CMI, as well as on U.S. delegations to the meetings of the U.N. agencies and the diplomatic conferences. The Committee on the CMI has the task of coordinating participation of the MLA in the work of the CMI. The CMI Committee does not have responsibility for any of the substantive work such as issues of transport law or general average. Other committees of the Association, for example, Carriage of Goods and Insurance and General Average, debate those matters in order to formulate our Association's position. Instead, the CMI Committee is responsible for keeping track of CMI activities in order to alert other committees when substantive work will need to be done, and to make sure that our voice is heard at CMI gatherings.

With this background, let me close by reporting that the scheduled meetings of the CMI are an International Colloquium in Bordeaux, France this June and a plenary conference in Vancouver, Canada, a year from this June.

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All members of the Association are welcome to attend these CMI meetings. Full information about the programs and the travel arrangements and the accommodations are available on the websites, www.comitemaritime.org and www.venuewest/CMI2004.

The CMI Committee, under its new Chair, Chris Davis, will next get together at a luncheon meeting in Bermuda. There will be a distinguished speaker. Like all of our meetings, the luncheon is open to everyone and I hope to see many of you there.

Thank you.

MR. HAYDEN: Thank you, Michael, and thank you for service over the past four years. You have done a great job.

Next we have Glen Oxtan, to be followed by David Farrell, Jr. of the Fisheries Committee.

Glen.

MR. OXTON: Mr. President, members and guests.

The Electronics Committee has been following work being done by the CMI in developing a model electronic format for transportation documents. This is a document that would replace a paper bill of lading. The idea is to standardize the electronic format, which will obviously enhance electronic commerce and may also aide efforts toward greater security because these documents can be scanned very quickly by computers.

We are also following the developing process of adopting electronic filing in the Federal courts. Right now there are 47 bankruptcy courts that have adopted it and 17 district courts. The circuit courts will not do it until about 2004. The entire process seems to be going somewhat slower than the Government had planned but it is moving forward. The committee is looking into presenting a training session for the general membership on electronic filing in the courts.

Our committee discussed briefly the *Winter Storm* decision by the Second Circuit in which the court held that an electronic funds transfer in the hands of a banking intermediary that happened to be located in New York was subject to a Rule B attachment. We understand a petition has

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been filed for *certiorari*. The decision has got the Federal Reserve Bank quite upset, as well as many other large banks, and we are watching that situation.

Our committee is also in charge of the website. We are looking into two enhancements. One would be a form on the site which would enable members to update their membership information, name, address, E-mail and so on, which would then be automatically sent to the Membership Secretary.

We are also considering, actually for a second time, the possibility of establishing electronic discussion forums on the website which would essentially permit a continuous electronic meeting of committees and sub-committees, which may provide a way for people who don't have the time to travel to these meetings to participate more in the Association.

Anyone who has materials that should be added to the website should send them to our new web master, John Paul Jones. His address is on the suggestion link right on the home page of the website.

That concludes my report, Mr. President.

MR. HAYDEN: Thank you.

Next we have David Farrell, Fisheries Committee, to be followed by Dr. Sam Menefee, International Law of the Sea Committee.

MR. FARRELL: Good morning.

The Fisheries Committee met yesterday at the offices of DeOrchis & Partners.

First, we addressed a MARAD final rule implementing the Lender Amendments to the American Fisheries Act. You will recall that two years ago at this meeting the Association unanimously endorsed, on Bill Birkhead's motion, the Lender Amendment Statute. The Final Rule is published at 68 Fed. Reg. 5564 Feb. 4, 2003. It deals with fishing vessels over a hundred feet in length and establishes eligibility criteria for preferred mortgagees as well as annual filing requirements.

Second, we continue to monitor cases from around the country dealing with the extension of maritime liens to encompass federal fishing

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permits. We consider this to be bad law and plan to work with the Marine Financing Committee to consider possible statutory revision.

Third, we had a very interesting presentation by Naval Architect John Womack on fishing vessel stability. He made a very complex topic simple.

Thank you for your attention.

MR. HAYDEN: Thank you, sir.

Next is Samuel Menefee.

He will be followed by Mary Elisa Reeves of the Limitation of Liability Committee.

DR. MENEFE: Mr. President, fellow members.

The committee on the International Law of the Sea met Wednesday at the South Street Seaport.

The first order of business was subcommittee reorganization into four overview and six substantive subcommittees. We would appreciate at least partial approval of this plan because we believe that this is one area which interested young lawyers could play a greater role in the Association, something which we have been trying to encourage. It would also recognize the efforts that members of the subcommittee have put into trying to make its work more comprehensive and relevant to the needs of the MLA.

There have been four new ratifications to the 1982 Convention since our last meeting, Armenia, Cutter, Tupelu and Ciaraboti. These four countries and Mexico have also approved the agreement relating to the implementation of Part 11.

The agreement relating to the conservation and management of straddling fish stocks and highly migratory fish stocks now has 34 ratifications, with the Ukraine and the Marshall Islands having been added since our fall meeting.

We have continued to monitor cases before the LOS tribunal and the oil platform case between the United States and Iran, which is currently being heard by the ICJ.

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There were 370 piratical attacks in 2002, an increase of 35 over the previous year, although not up to the record 469 in 2000. Almost a third of these, 103, were in Indonesian waters.

I am pleased to report that we were contacted by the OES OLP from the State Department concerning the MLA and CMI draft piracy codes and supplied them with materials for a possible revision of the United States Piracy law.

Chuck Lane announced two reports dealing with blowouts in the status of the oil industry which were available to all members from him at chuck.lane@haliburton.com.

Doug Burnett gave us an update on the work of the Ocean Policy Commission, whose report is currently being written.

It was further suggested that we attempt to get a Bermudian government speaker for our fall committee meeting.

Finally, we heard from our incoming chair, Larry Brennan, about his plan for increased E-mail contact, with an emphasis on real world business and enabling committee members to consider projects and issues of interest to them.

That concludes my report.

MR. HAYDEN: Thank you. And thank you for your service as committee chair over the past four years.

Mary Elisa Reeves.

Mary will be followed by Matt Marion, Marine Ecology.

MS. REEVES: Good morning, everyone.

The Limitation of Liability Committee met Wednesday. We discussed a number of interesting topics.

First, David Farrell of the Fisheries Committee came and talked to us about the *Gowan* decision from the First Circuit. As he mentioned, that case held that a maritime lien could be asserted against a fishing permit.

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Our committee is looking at whether that means, as we think it might, that the value of the permit must be included in the limitation fund in the event of a total loss or an accident involving a fishing vessel.

As many of you know, these permits can be worth more than the vessel itself. So that's an important issue, and the Young Lawyers Committee is assisting us and will hopefully be in a position to give a presentation on this issue at our Bermuda meeting.

Our secretary, Dana Henderson, is going to work with the CLE Committee in an effort to ensure that we can offer CLE credit for our Bermuda committee meeting.

In order to that, we will have various presentations. I believe one will be on the fishing permits, and a second will be on the effect on limitation of the new security regulations, as Gordon mentioned, the Marine Transportation Security Act, as well as the ISPS code, which will provide requirements that all vessel owners involved in international trade will have to have security plans.

And while normally one would think that a loss caused by an act of terrorism or criminal act of a third party would not give rise to liability of a vessel owner, obviously, if there are security plan requirements and a court were to find there was a breach of the security plan or the procedures were not followed, then that could affect limitation of liability and exoneration as well. So that will be another issue and topic for a CLE presentation at our meeting in Bermuda.

The second edition of our newsletter is available on the back table so please feel free to pick that up.

Finally, just on a personal note, I would like to thank the officers, the board and all members of the Association for allowing me to serve for the past three years on the Board of Directors. It has indeed been a privilege and an honor and a wonderful experience.

Thank you.

MR. HAYDEN: Thank you very much.

Matt Marion, to be followed by Sandra Knapp of the Marine Finance Committee.

[13578]

Matt.

MR. MARION: Good morning.

The Marine Ecology Committee met on Wednesday afternoon and received reports from half a dozen committee members concerning recent civil and criminal proceedings as well as legislative enactments, both federally and internationally.

In a significant recent decision, *In Re Alex 'C' Corporation*, Judge Woodlock of the U.S. District Court of Massachusetts held that a tug which had caused a 60,000 gallon fuel oil spill by puncturing the side shell plating of a tanker it was assisting could only limit its potential liability as a sole cause third-party to the statutory limit of the discharging vessel, in this case the tank vessel that it was assisting, and not that of the tug itself.

Had the tug been able to use its own gross tonnage, as the basis for fixing its statutory limit under OPA, it would have been liable for \$500,000 in OPA damages. Instead, under the tank vessel's OPA limitation the tug was potentially liable for \$6 million in costs and damages as a result of the spill.

This holding directly rejects the prior holding in *National Shipping Company of Saudi Arabia v. Moran*, a trial court decision in the Fourth Circuit which allowed a similarly situated tug to limit its OPA liability based upon its own tonnage and not that of the spilling vessel.

Judge Woodlock was clearly troubled by the fact that, in his view, OPA sets a distinct statutory limit of liability only for sole-cause third parties not in privity with discharging vessels, and thus stayed his decision for 45 days pending further briefing by the parties and in the hope that the oil spill liability trust fund would make a submission. That briefing by the parties has been completed. The trust fund did not, however, make any submissions.

The Committee does not make any recommendation with respect to this case, but is monitoring future appeals closely.

The Committee also received a comprehensive report from Dave Dickman, of Washington, who did double duty by reporting on marine criminal matters at Dennis Bryant's meeting two hours later.

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Dave noted that prosecutors are increasingly using APS, which is our implementing statute, for Marpol, as a basis for prosecution because there is no need to prove specific intent, unlike, for example, 18 USC 1001, which is our false reporting statute.

He also noted important changes in prosecutorial guidelines with regard to corporations, including greater emphasis on the nature of the company's offense without reference to any other potentially mitigating factors.

The clear import of his remarks was that the number of criminal proceedings after marine pollution incidents continues apace with a concomitant increase in the size of fines and the length of jail sentences and probation.

This is a topic that we will likewise continue to monitor closely. More detailed minutes of the meeting will be posted on the MLA's website.

Thank you.

MR. HAYDEN: Thank you very much.

Sandra on the Marine Financing Committee.

Sandra will be followed by Stephen Rible of the Marine Insurance and General Average Committee.

MS. KNAPP: Thank you, Mr. President.

Ladies and gentlemen, good morning. Wake up.

We had several guests at our May meeting on Wednesday and also at some of our subcommittee meetings.

Richard Lorr of MARAD gave us a quick update on MARAD matters, including the state of Title XI, government guaranteed financings.

Tom Willis of the Coast Guard National Vessel Documentation Center gave us a quick update on documentation matters from his perspective. You should all know that our U.S. documentation system is finally slowly moving towards an electronic system. You will be able to get information very quickly, and you should also be able to file instruments very easily.

[13580]

Clay Maitland of International Registries gave us a great presentation on security and transparency matters in the vessel owning world. As you all know, it's very difficult to find out who actually owns a vessel. There are many ways to hide the actual ownership of the vessel. And we considered that there is a balance between keeping corporate information confidential and security, disclosure and transparency matters that are important in today's world.

We also heard from Zaphins Hatzidimitriou of Greece. He gave us an update on the Greek flag. This is consistent with our last few meetings where we have paid a little attention to some of the foreign flags.

We naturally discussed fishing vessel financing. Steve Johnson of our Committee has been helping us follow all those developing changes, as well as Dave Farrell who came to our meeting. We appreciate that. He discussed, of course, fishing permits being considered appurtenances to a fishing vessel.

We are also following, of course, the mortgagee requirements on fishing vessels which now has greater citizenship standards, but just for that particular industry.

We are also actively following several legislative and regulatory happenings. Barbara Burke, Chair of the Maritime Legislation Committee, was at our meeting. We are following the Patriot Act because that addresses money laundering which is especially relevant in the yacht and boat dealers' world.

Foreign leasing company regulations are still with the Coast Guard. Many comments have been filed. I direct you to their website to read some of the comments.

We are addressing the Customs ruling regarding passenger vessels for hire, where even though you are just entertaining business guests which have not paid a fare, you are engaging in coastwise trade. Of course, that affects financing because if you are in violation of the coastwise trade laws, the vessel is subject to forfeiture.

The Tax Subcommittee continues to monitor the final regulations under Section 883 of the Internal Revenue Code.

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As you can see, our subcommittees are very active. We are actually trying to consolidate it a little bit.

Jim Bartlett of Practice and Procedure, and I have suggested to the Board that we expand somewhat, our Joint Subcommittee on Insolvency and Foreclosure, and to disband the Marine Financing Subcommittee on Maritime Liens and Mortgages because they address a lot of the same issues, and we are going to hopefully combine them.

Our subcommittee on U.S. Coast Guard Documentation, headed by Tom Whalen, is following, of course, all the Coast Guard documentation matters and the security and transparency issues on which Clay gave us an update on.

Mark Buhler, Chair of the Yacht Finance Subcommittee is addressing numerous issues. His agenda was three pages long, and I won't get into it at all today, but they are very active and there are a host of issues facing them.

We continue to have new projects. And I think that concludes my report.

Thank you Mr. Chairman.

MR. HAYDEN: Thank you very much, Sandra.

Steve Rible, Marine Insurance and General Average Committee.

And I invite you all to put on your seat belts for the following committee.

The Maritime Arbitration Mediation Committee had asked for 20 minutes. I don't know if that means there is controversy. I don't know what that means.

(Laughter.)

MR. HAYDEN: Steve Rible, go ahead with your Marine Insurance Committee.

MR. RIBLE: I'm glad I go first.

MR. HAYDEN: Maybe my cue card is wrong.

[13582]

MR. RIBLE: The Committee on Marine Insurance and General Average met on Wednesday, all day Wednesday, and we are promising to abbreviate it a little bit, in the future.

Jonathan Spencer, our Chair for General Average, announced that efforts are continuing in the CMI to amend the York Antwerp Rules, so as to limit general average to “the common safety” and no longer apply it to “the common benefit.”

John Woods, chair of the Hull and P & I Committee, spoke about the ongoing hull annotation project. He also discussed the American Institute and the Hull Syndicate Clauses on terrorism in light of the new Terrorism Insurance Act.

We also had Simon Harter present an exegesis on the new hull cover proposed by London referred to as the “International” wordings.

Next speaker was Joe Grasso, who provided a Power Point presentation on the 2002 Terrorism Risk Insurance Act.

After that, George Zacharkow, chair of the Cargo Committee, explained that his committee is pressing on with a compilation of cases analyzing all risk cargo insurance.

Then, a couple of ACE cargo underwriters appeared, Mr. Howell and Mr. Costello, and they entertained the crowd with a scintillating discussion of the business of underwriting ocean cargo insurance.

I don't want to forget the fact that my trusty vice-chair, Gene George, issued a Spring Newsletter that has a very interesting tidbit about hot dog stands. It also has a thorough analysis of the new terrorism legislation. Don't forget to pick up a copy outside the door. The copies are free and they are going fast.

MR. HAYDEN: Thank you very much.

Don Kennedy.

He will be followed by John Schaffer, Maritime Personnel.

You have a while yet, John.

[13583]

MR. KENNEDY: I will be brief and to the point.

Thank you, Mr. President.

The committee will submit a written report but I would like to limit my oral comments to two issues.

The first is that the committee, at its meeting this week, has decided to submit to the website the agenda of its meetings in advance, and to also publish the minutes of its meetings. And we also intend to make arrangements so that people can call in and participate by telephone in our meetings.

The second issue is what I previously reported about two and a half years ago, about amendments, to the Federal Arbitration Act. At that time the committee approved the amendments but we were reluctant to come to the Association with a resolution, because it was unclear to us whether this would be a productive exercise.

We are here today with a resolution for legislation that we call the Maritime Arbitration Act of 2003. The reason there has been a delay in coming up here today asking for a resolution, let me put it this way. If the American Arbitration Association had a deck of cards with a list of issues that they don't like, amendments to the Federal Arbitration Act would be the ace of spades.

So mindful of that, we have proposed four issues.

The first relates to consolidated arbitration which changes the presumption that currently exists against consolidation.

The second issue provides for the appointment of a second arbitrator in a mechanism without having to resort to the court to have the court appoint an arbitrator.

The third issue relates to preserving evidence, and permits the arbitrators, under our proposal, to have broad authority nationwide to subpoena witnesses and documents.

And the fourth issue relates to modification of awards to correct typographical and arithmetical errors.

[13584]

And, Mr. President, we have a resolution.

MR. HAYDEN: I presume that this resolution is in noncompliance with our bylaws, Section 504.

MR. KENNEDY: Yes, sir, that's correct.

MR. HAYDEN: A unanimous resolution?

MR. KENNEDY: Unanimous resolution. Three times.

“Resolved that the Maritime Law Association of the United States supports the enactment of a statute to provide for consolidation of maritime arbitrations, expedited appointment of arbitrators in maritime arbitration, obtaining and preserving evidence for use in maritime arbitrations, and modification of awards in maritime arbitrations; and the President is authorized to designate representatives of the Association to make this resolution known, and to facilitate its implementation, by the appropriate committees of the Congress.”

MR. HAYDEN: Is there any discussion of this resolution?

MR. SNYDER: Michael Snyder, from Chicago.

I don't know nearly enough about this to be able to vote on this resolution.

Am I supposed to vote on it?

MR. HAYDEN: Yes, you are.

MR. SNYDER: I couldn't vote on it one way or the other. Don't know enough about it.

MR. HAYDEN: Go ahead, Don.

MR. KENNEDY: If I may comment, this morning we put a letter out with the resolution and the proposed legislation, and in my cover letter I note that the committee prepared an extensive report in November 2000 which was published in the MLA report.

[13585]

It's about a ten page report, which explains the approach the committee took in proposing these amendments.

And essentially what we have done, instead of making amendments to the FAA, we have just made some style changes to make it a separate piece of legislation.

A VOICE: Was the vote on this resolution on the agenda for this meeting?

MR. HAYDEN: There was no agenda.

A VOICE: I think if we are going to come to a meeting, a general meeting of the Association and be asked to vote on a resolution that there ought to be some notice of that, that there is going to be call for a vote, so that I could have read the materials that the gentleman is referenced to and be prepared to vote.

MR. HAYDEN: Our bylaws require that there be given 45 days' notice in the event of a dissenting opinion or resolution by committee. Unanimous committee reports may be acted upon at any time at any meeting of the members.

A VOICE: Thank you.

MR. HAYDEN: Do you so move?

MR. KENNEDY: So moved.

MR. HAYDEN: Do I hear a second?

A VOICE: Second.

MR. HAYDEN: All in favor?

(A chorus of ayes.)

MR. HAYDEN: All opposed?

(No response.)

MR. HAYDEN: Hearing no opposition, the resolution is passed.

[13586]

MR. KENNEDY: Thank you, Mr. president.

MR. SCHAFFER: Good morning, everyone.

The Maritime Personnel Committee met on Thursday afternoon, and I am pleased to report that we had 37 members and guests and a very lively discussion.

We, among other things, talked about the IMO ILO *ad hoc* expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers who met this week in London.

We also discussed the U.S. Government's project to revise and codify Title 46 of the U.S. Code. In addition to monitoring developments regarding asbestos claims and proposed legislation, which is in the paper regularly now, we continue to keep our eye on the area of the law of punitive damages.

Both of these issues, asbestosis and punitive damages, have been the subject of recent Supreme Court cases.

We also talked about tort reform in general and the medical liability bill in particular.

The Personnel Committee furthermore discussed and reviewed several significant decisions from all around the U.S.A., including three important Supreme Court cases involving issues facing vessel owners, employers and claimants.

We welcome suggestions from the Association for new and interesting projects and are always looking for additional members and significant decisions.

Thank you very much. That concludes my report.

MR. HAYDEN: Thank you, John.

Now, the next committee report is to be given by Dennis Bryant, Navigation, Coast Guard and Government Relations Committee.

He will be followed by James Bartlett, Practice and Procedure Committee.

[13587]

MR. BRYANT: Thank you, Mr. President.

The committee met Wednesday afternoon, a well attended meeting, and we had speakers from the Coast Guard.

Commander Poulin talked about maritime security.

Commander Dahill talked about marine casualty investigations.

We had Richard Lorr from MARAD talk about a number of MARAD issues including ship scrapping.

And Amy Larson from the Federal Maritime Commission talked about recent developments there, including the ongoing investigation regarding shipping conditions in China, and reminded us that not too many years ago the FMC imposed very severe sanctions against Japanese carriers because of perceived conditions in Japan at that time. And the possibility very obviously exists that a similar action could be taken with regard to China.

Bill Storz, who is a member of the MLA, spoke to us about the Military Sealift Command and their recent activities in the Gulf War.

Maritime Security is obviously the hot button issue. The Coast Guard held a series of public meetings around the Country this winter. I know many of you attended one or more of those meetings. The Coast Guard intends to publish its interim regulations for maritime security, hopefully in June of this year, no later than July, their timeline. Those rules will go into effect immediately. It is not a notice of proposed rule making, it is an interim final rule.

It places a great burden on the Coast Guard, hopefully to get it right, it places a great burden on us and our clients to respond quickly. There will be a comment period with that because the Coast Guard will follow that up with a final-final rule later in the year which would replace that, probably towards the end of the year. Very, very significant. It's going to have a major impact on carriers and on shippers. So stand by.

Segueing into my other duties as chair of the *Ad Hoc* Committee on Codification of Title 46, the codification package was submitted to Congress by the Department of Transportation with the convening of the new Congress. They have not taken any action, being consumed with the

[13588]

situation in the Middle East and with the economy. But we expect them to take it up at some point in the future and that we will have another opportunity to participate in that process.

That finishes my report.

MR. HAYDEN: Thank you very much, Dennis.

Next will be Jim Bartlett, Practice and Procedure Committee.

And he will be followed by Kimbley Kearney on the Uniformity of U.S. Maritime Law.

MR. BARTLETT: Thank you.

The Committee on Practice and Procedure met Wednesday morning at Bigham Englar. We discussed various topics.

First, the amendments to Rules B(1)(a) and Rule C(6)(b)(i)(A), which have been the subjects of resolutions that this organization has adopted, are still in process.

They have been approved by the Advisory Committee but they are sort of on hold because they don't want to advance these until something is resolved on the status of proposed Rule G, which is the rule that we have also discussed previously that has been proposed to sort of sort out from the rest of the admiralty rules the provisions dealing with non maritime forfeitures. That is still being discussed, so everything is on hold in that regard.

We discussed, at some length, a proposal that changes be made to the notice requirements governing preferred mortgage liens and maritime liens in general. We discussed language that would amend 46 USC 31325(d)(1) to include, among the parties who must be notified of the enforcement of a maritime lien, the owner of the vessel as well as any other person known to have an interest in or against the vessel.

We are going to make a proposal in this regard following the lead of our friends in the Coast Guard. We will be publishing this for comment in our written report, and we ask all of the members to review that, if you would, and give us any comments you have concerning these proposed

[13589]

changes. Once we receive those comments, we anticipate that we will make a resolution for approval to the membership as a whole. We would also amend by addition the notice requirements in Rule C(4) by the addition of reference to a maritime lien after the words, "preferred ship mortgage". So that would be the subject of our written report, and we request the members to pay special attention to that and give us your comments, please.

With that I conclude my report, thank you.

MR. HAYDEN: Thank you, Mr. Bartlett.

Is Kim Kearney here?

I'm sorry, Kim.

Kim Kearney will be followed by Tom Russell on the Recreational Boating.

MS. KEARNEY: Thank you Mr. President. Good morning.

The Uniformity of Law Committee met on Wednesday afternoon and the principal topic of discussion for our meeting was the Supreme Court's December 2002 decision in *Sprietsma v. Mercury Marine*.

The subject of particular interest was the Court's rejection of the argument advanced by the defendant engine manufacturer, and supported by the MLA that the goal of promoting uniformity of law calls for the preemption of state common law remedies on an issue that was addressed under the Federal Boat Safety Act.

Significantly, the Supreme Court felt that the goal of promoting uniformity did not justify the displacement of the state law remedies which intended to promote safe boating.

The committee will continue to follow this decision and marine product liability cases involving recreational boats to gauge the impact of *Sprietsma* in the future.

That concludes our report, Mr. President.

MR. HAYDEN: Thank you, Kim Kearney.

[13590]

Tom Russell. Recreational Boating Committee.

Tom will be followed by Dr. Wiswall.

MR. RUSSELL: Mr. President, members, distinguished guests.

The Recreational Boating Committee met yesterday afternoon at the New York Yacht Club in the Commodore Room. We had about 35 members in attendance.

We were honored to have two distinguished guest speakers, Frederick Silberman, the President of Alliance Risk Marine Managers and Mitchell Gibbons Neff, the President of Sparkman and Stevens.

Mr. Silberman spoke about trends in the marine insurance industry, particularly with reference to yachts.

Mr. Neff spoke on new yacht design, construction and brokerage.

We were delighted to have these industry leaders speak to our group because it reminded us of the importance of inviting nonlawyers to attend and possibly join the MLA. In that connection we heard about membership growth and other matters from our board liaison, Pat Cooney.

Our vice chair, Frank DiGiulio, reported on the current edition an Boating Briefs, which is in the back. We are indebted to Frank for his hard work in writing Boating Briefs twice each year.

Our Offshore Affairs Subcommittee chair, Lars Forsberg, reported on recent sailing developments.

And Mark Buhler led a lively discussion on the new Customs Service interpretation of passenger under the coastwise laws. You have already heard a little bit about this from Sandy Knapp. This is of particular importance in recreational boating. As you know, 46 U.S. Code, Section 289, prohibits foreign vessels from transporting passengers between places in the U.S.

The new Customs ruling arises from the use of the Cayman's Flag yachts in U.S. waters for political fund raisers. Customs ruled that the attendees were passengers under the coastwise laws so the vessel couldn't sail in U.S. waters. It was probably the wrong political party.

[13591]

The new ruling exposes owners of foreign built and state titled recreational vessels to penalties where business guests are transported. Now they will need a coastwise endorsement, which may not be possible, absent special legislation for foreign built yachts. Our Committee wonders whether the Customs Service really intended such a restrictive interpretation.

By unanimous vote we established a study group to investigate the basis for the ruling to see if it was inadvertently made too restrictive and, if so, to encourage correction. The study group will report to our committee at the next meeting. At that time we may seek board approval for a legislative correction.

After our committee meeting, we had a tour of The New York Yacht Club.

Mr. President, that concludes my report.

MR. HAYDEN: Thank you, sir.

Dr. Wiswall will be followed by Anne Hopkins and Don Greenman who wish to make a couple of comments.

DR. WISWALL: The Elliot B. Nixon prize will be awarded this year.

I did announce that at the fall meeting but the details were not then available. They were published on the back cover of February's issue of AMC. They are going to be republished on the back cover of the next issue of AMC, thanks to the generosity of Anne Hopkins and the Board of AMC.

I ask that those who are attending the Maritime Law Teachers meeting this afternoon, please spread the word about. Anyone who wishes to have the details direct from me may E-mail me, and I will see that you get them in return. The winner of the prize will be announced at the fall meeting of the Association in Bermuda.

I now retire, Mr. President, to my native port for a regimen of slumber and strong drink to cure my ills.

(Laughter.)

MR. HAYDEN: Dr. Frank is from Maine, and I'm not sure whether he has got SARS or has been subject to the arsenic poisoning that's going on in Maine.

[13592]

MS. HOPKINS: Those who live in Minnesota don't understand what happened on the East Coast when we had all that snow followed by floods in Baltimore, which is where AMC is published, and things became dead for a while, created by an act of God or something.

However, I would like to report that, in spite of all of that, we are working very hard and we expect to bring out the 16th five-year digest in the middle of June, and I hope you will all pick up the first announcement, which is outside on the table.

With that, I yield to Don Greenman, who has something important to tell you about the Digest.

MR. GREENMAN: Thank you, Anne.

One of the things that AMC has always done when we have a five year digest is to dedicate the issue to somebody who has been important in the maritime law field. This year we have selected somebody who is a co-author of an admiralty law case book which many of you or your associates have learned from in law school. He is a proctor member of the MLA, although he might qualify as an academic member. One of the reasons that he has stayed a proctor is that he can help work with the Association.

In the late 1970s or mid 1970s, when the constitutionality of the admiralty procedures of arrest and attachment were under severe challenge, he was part of the team that was instrumental in more or less rescuing the continued vitality of the rules by participating in amicus briefs in several courts. In one of the briefs, I am told that Judge John R. Brown of the Fifth Circuit commented that the MLA's brief was one of the finest briefs he had seen in his 28 years on the bench. The court upheld the arrest procedure. *Merchants Nat'l Bank v. The General G.L. Gillespie*, 1982 AMC 1, 663 F.2d 338 (5th Cir. 1981).

He has been a long-time, or was a long-time Associate Editor of American Maritime Cases for Washington, D.C., but several years ago he presented us with a quandary because he moved to Baltimore. We already had a full stable of Associate Editors in Baltimore, so we created the position for him as Consultant so that he may remain a part of the AMC family.

In case you haven't guessed by now, our honoree for this Digest is Professor David Sharpe.

[13593]

(Applause.)

MR. GREENMAN: Congratulations, David.

MR. HAYDEN: Next we will have a presentation by the Young Lawyers Committee, Josh Force.

But before he takes the microphone, let me remind everyone that this afternoon there is a CLE program in this room. It's on the Evolution of and Current Status of the MLA COGSA Amendments.

The presenters will be Professor Joseph Sweeney of Fordham Law School; Professor William Tetley, McGill University School of Law; Vincent DeOrchis, or, I believe, Chet Hooper is filling in for Vincent DeOrchis.

And there will be CLE credits available. We invite you all to attend here and listen to those that know more about it than any of the rest of us.

Josh Force.

MR. FORCE: Thank you, Mr. President.

The Young Lawyers Committee met yesterday and had a lively discussion on several areas of discussion important to our Committee.

First, we discussed reviving our liaison system, which was created a number of years ago to establish contact persons from the Young Lawyers Committee to each of the standing committees.

I think it worked very well. It worked so effectively that many of our committee liaisons became very active members of the standing committees, and some of them even were appointed officers of the committees.

We have not appointed new liaisons for a number of years, and the new officers of the committee are going to work with the members of the Young Lawyers Committee to revive this process, to appoint new liaisons, because we have heard from a number of standing committees that there is interest in having a contact person on the Young Lawyers Committee so that when projects arise, there is someone to go to to assist with getting volunteers for that project.

[13594]

The second area that we discussed yesterday was the work of the *Ad Hoc* Committee of the Maritime Law Association.

Liz Burrell, who is our board representative, participated in a discussion with our members, and we were really focused on how the changes in maritime law have affected the young lawyers in the Association and those who may not have become active in the Association.

We had a very lively discussions on what the young lawyers think about the future of the Maritime Law Association, and how it will affect them and what they can do to help the Association.

Finally, we discussed our ongoing projects. We have told you about a number of those in the past, and I think you are probably familiar with them because most of them come from the standing committees.

One that I will single out is our indexing project. We have been asked to assist the Association in indexing its MLA reports and proceedings. We have made a lot of progress on that, and hopefully, in the coming years, we will be able to report further that we are bringing that to some closure.

The remaining projects are outlined in our newsletter which is the Theoretically Quarterly, the TQ. It has been E-mailed to a number of people, and hopefully will be on the website soon.

Also, as I have done in the past, I really encourage everyone who is involved in committee work, to the extent that there are projects that you need help on, please let the officers or any members of the Young Lawyers Committee know.

We have a lot of people who are very, very interested in getting involved in the work of the various standing committees, and it's really the way that we get folks from our committee to become involved in the work of the other standing committees and have a lot of people who are very interested.

I would like to thank the officers of the Young Lawyers Committee who assisted me over the last two years, Larry Kahn and Katharine Newman. They have done a great job, and I know that Larry is going to continue to do a great job as the next chair of the Young Lawyers Committee.

[13595]

Thank you, Mr. President.

MR. HAYDEN: Thank you very much, Josh.

Liz Burrell.

MS. BURRELL: Thank you.

I asked Ray for special permission to speak, because it's my belief that the Young Lawyers Committee, its leadership and its members, don't get anywhere near the amount of credit they deserve to for the scope of their contribution to every phase of this Association's activities. The committees really couldn't function without the energy, ability and dedication of so many of these young lawyers. You scratch a successful committee project, and you will find young lawyers.

They try to keep those reports nice and short and sweet, but The Young Lawyers Committee Chairs only mention a few of the projects in which the Committee is involved. Let me tell you that they are involved in every aspect of the Association's projects.

And it's mutually beneficial. They are learning; they will be achieving recognition within the committees with which they associate themselves; and, at the same time, they are bringing new blood to the Association.

I urge you to send your young lawyers to the Young Lawyers Committee. I urge those young lawyers to get involved through that committee which acts as such a superb vehicle for channeling all of that energy and intelligence and dedication into this Association, and which keeps it going and keeps us all as fine professionals.

Thank you, Ray.

MR. HAYDEN: Next we are going to have a presentation by a Committee Chair, and I understand that he is not able to do it alone. I am not sure whether he is too embarrassed or he needs supporting actors to go with him. But I understand he has not any supporting actresses with him. I am not sure why because I know that the committee has some very strong supporting actresses.

Without saying what the committee is, let me introduce you to Mr. Parrish. If you hadn't noticed him before, you sure will now.

[13596]

MR. PARRISH: This will be the last time this happens.

(Laughter.)

MR. PARRISH: We were challenged and we came through.

The Planning and Arrangements Committee for the fall meeting met yesterday afternoon. This is sort of an example of the membership. We do have some ladies, but they refused to engage in such behavior.

The fall meeting, as you know, will take place at the Fairmont Southampton in Bermuda. I am pleased to report that there has been a multi-million dollar renovation of that facility, and I think you will find it much improved over the last time we attended there.

On a serious note, the committee, as well as the officers and leadership, does listen to input. One of the most important things that has been heard is comments about our resort meetings.

This meeting is going to be called CLE in Bermuda. The format, as we discussed before, has been changed. It will be Wednesday through Saturday. The dates are October 29th, the Wednesday, through Saturday, November 1st, Halloween being on Friday night.

The CLE has been planned through the able assistance of Larry Kahn. We anticipate from 12 to 14 hours of available CLE credit. The CLE presentations will be morning sessions on Thursday and Friday, with various committee meetings scheduled those afternoons for perhaps an hour duration of additional CLE, on subjects you have heard many of the committee people talk about today.

The dinner will take place on Saturday, and it will be Bermuda attire, no black tie. Bermuda attire, of which these are some examples of the current fashions.

(Laughter.)

MR. PARRISH: You don't have to wear hot pink and you don't have to wear shorts, but we will give a suitable explanation in the brochure which will go out in about a month or six weeks as to the attire.

That concludes our report, Mr. President.

[13597]

MR. HAYDEN: Do you wish to comment on some of the principals that we are going to have there for the CLE and for our speakers? The membership might be interested in that.

MR. PARRISH: Thank you for that apt reminder.

Bill O'Neill, the general secretary of the IMO, has agreed to be the speaker at the Saturday session.

We have also, without naming names, we have lined up several senior members of several P & I clubs to speak at the CLE presentations on Thursday and Friday, and other notables that we think will be nice people to give us hot topic discussions on some of the current issues that are afloat.

Thank you.

MR. HAYDEN: Thank you very much. We look forward to everyone here joining us in Bermuda for the CLE presentation.

MR. BERNS: Mr. President, point of order.

For the older members of the Association, and many of us know who we are, or try to remember who we are, in terms of the Bermuda shorts, they are very convenient if you are directly applying arthritis cream to your knees.

(Laughter.)

MR. HAYDEN: Thank you for that bit of advice, Mr. Berns.

MR. BERNS: I knew you were waiting for it.

MR. HAYDEN: Do you wish that stricken from the record?

MR. BERNS: No. I will be submitting my autographed picture later.

MR. HAYDEN: We have now have completed all our committee reports for today.

Our next item of business is the Nominating Committee, which has been chaired by Past President Dorsey.

[13598]

MR. DORSEY: Thank you, Mr. President.

I might just mention for Phil Berns' sake that I believe there's Botox for knees now.

(Laughter.)

MR. DORSEY: The Nominating Committee met this Wednesday, and we nominate the following to serve as officers of the Association for a one-year term:

For President, Raymond P. Hayden of New York.

First Vice President, Thomas S. Rue of Mobile.

Second Vice President, Lizabeth L. Burrell of New York.

Secretary, Warren J. Marwedel of Chicago.

Treasurer, Patrick J. Bonner of New York.

Membership Secretary, Philip A. Berns of San Francisco.

In addition, Mr. President, there are four open positions on the board of directors, and we have nominated the following four members to serve a three-year term ending in the spring of 2006.

They are Robert J. Gruendel of New York.

Edward F. Lebreton, III of New Orleans.

John P. Schaffer of Wilton.

And M. Hamilton Whitman, Jr. of Baltimore.

That is the report of the Nominating Committee, Mr. President.

MR. HAYDEN: Thank you, Mr. Dorsey.

I call upon Mr. Lord.

[13599]

MR. LORD: Mr. President, I move that the Association accept the report of the Nominating Committee, and will the Secretary be directed to cast a single ballot in favor of this slate in order to make the vote unanimous.

MR. HAYDEN: Do I hear a second?

A VOICE: Second.

MR. HAYDEN: Any opposition?

(No response.)

MR. HAYDEN: Hearing none, motion is approved.

I want to thank the membership for their vote of confidence in the current slate of officers.

I want to thank of the membership also for selecting a new group to the board of directors who I am sure will do a great job working for the Association.

And, lastly, I think we need to thank the outgoing board members who I mentioned earlier.

I believe that we have come to the conclusion of our meeting.

I just want to make one comment, if I may, and that is that tonight's dinner is 875 strong.

We are going to have a great dinner. We look forward for seeing you all there. We have a good cast of dignitaries. We have the Chief Judge from the Eastern District of New York, The Chief Judge from the Southern District of New York and several of the judges.

We hope you are all there and we hope that you have a great time.

MR. LORD: Mr. President, I move that this meeting be adjourned

MR. HAYDEN: Do I hear a second?

A VOICE: Second.

[13600]

MR. HAYDEN: Thank you all for coming.

(Whereupon, at 11:30 o'clock a.m., the meeting was adjourned.)

[13601]

**FORMAL REPORT OF THE COMMITTEE ON
AMERICAN BAR RELATIONS**

The House of Delegates met in Seattle on February 10 and 11, 2003.

As is the custom, the delegates from the affiliated organizations and also delegates from the various ABA sections are seated with their respective states. One of the early orders of business was the report of the Nominating Committee of the President-Elect-Designate and the other members of the Board. They will be "voted on" at the Annual meeting. The President Elect Designate is Robert J. Gray of Hunton & Williams.

(1) Financial. Another general matter addressed early in the Monday session related to fiscal activities. The fiscal activities of the ABA's \$180,000,000 dollar budget were discussed. Revenue comes from members' dues, section dues and a lesser amount from grants.

A report was given by the Executive Director (the senior employee of the ABA) who employs over 400 persons, principally related to a cost overrun. He announced that there has been a cost overrun in the computer programming of \$10,000,000. Additionally, he announced that he was taking over the function of the CFO, and that the preliminary investigation had revealed that there was no fraud in this overrun.

Later in the meeting the motion was passed that all dues be increased 15%.

(2) Rights of Enemy Combatants. Revised Resolution of 109 ultimately passed. I voted against it. I was firmly convinced by the United States Attorney, for the Western District of Washington, who was present, presenting the position of the United States and the Department of Justice. His position was rational and amply argued the fact that this was a non-constitutional matter. The proponents of the Resolution agreed that it was not a constitutional matter, but the emotion carried the day and the Resolution passed. I voted "No".

(3) Resolution 303. This Resolution related to support for immediate and significant increases for federal judicial salaries and passed 89% to 11%.

(4) Resolution 304. This is a reaffirmation of ABA's position on modification of Class Actions under Rule 23. This position is a reflection of

[13602]

many lawyer groups. Apparently legislation has been passed by the House of Representatives and currently the Senate is reviewing and considering this matter. The Resolution was passed 90% to 10% with most of the opposition coming from those expressing the view that this is a U. S. Chamber of Commerce Bill. It may well be that our Procedure Committee should keep an eye on this since so many of us are involved in class action litigation, both maritime and non-maritime. It would however be a secondary priority, I would assume. I have worked on Rule 23 on the Federal Procedure Committee of the American College of Trial Lawyers and believe that an even balanced perspective is being advanced by the College and the ABA. I voted "Yes" for this Resolution.

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA)

Resolution 113G. Resolution 113G was to be deliberated on the merits during the Mid-Year Meeting. The Resolution had been proposed by the National Conference of Commissioners on Uniform State Laws for consideration by the State Legislators. I received, as did every other member of the House of Delegates, well over a 150 lengthy emails and multi-page letters. Many of these came from clients. All of this activity arose on the last day of January and was somewhat evenly balanced between pros and cons. After spending several hours during several days reading all of this material, I decided that if it came to a vote on the floor I would vote against the Resolution, since I felt primarily that the leadership had not given us adequate time to study a matter that touched so many organizations and was of such consequence. If there was any merit to the Resolution it could be raised again at some future time. Also, I received numerous documents from General Counsels and Assistant General Counsels from around the country (who I have personally worked with) that are against the project.

Fortunately, at the meeting, reason prevailed and Resolution 113G was withdrawn. However, all of this occurred after a great deal of effort and study had been done on a crash project by everyone in the House. Additionally, many diverse organizations also spent countless hours involved in "having their say". I have saved about ten percent of the various responses that I received because on many occasions I did not "printout" an email unless it had something new to say. If the matter comes up again at least I will have a file for someone to use in the future years.

[13603]

**ASBESTOS
(RESOLUTION 302)**

Once again, at the very last minute, a new matter was interjected. Upon arrival at the meeting hall on Monday morning, a lengthy report of a task force that had been formed in November 2002 was presented. There had been no advanced executive summary or a resume of any type concerning this proposal. Moreover, there had not even been any advance notice, not even a day or two, before the meeting. Basically, it arose because on March 5, 2003, Senator Hatch is beginning hearings by the Judiciary Committee of the Senate on a solution to the thirty-year "crisis" on asbestos. Basically, the plan is to have a medical threshold before suit can be filed. If a potential plaintiff has no illness or is "asymptomatic" then the prospective plaintiff may not file suit. For these types of future plaintiffs, the statute of limitation is tolled until there is sickness or symptoms.

A number of speakers addressed this issue. ATLA seemingly is against it, but their National President and many members expressed a somewhat conciliatory position. There were probably twenty presenters in a pro and con mode. Many of the members of the House were generally in favor of the solution, but were very unhappy with the expedited procedure. I would consider myself to be in that category. Nevertheless, I was greatly influenced by Griffin Bell's written endorsement of the Resolution. The Resolution passed 70 to 30%, and I voted in the affirmative.

Suggested action plan for MLA. There are numerous MLA members who are involved in maritime asbestos matters. These may involve cases against ships, P & I Clubs and perhaps also shipyards. I would suggest that there be a "watching brief" because it may well be that during the Senate and eventual House hearings MLA input for our members and constituency may be important. I know that, for example, our firm has about forty of these pending. Many MLA members are handling far more. I had one case for a Jacksonville ship owner that had been out of business for many years that had been filed in Nevada. I had to get it dismissed.

I would suggest a committee on a watching brief not spend any money and to be composed of those who I know in the past have been active in asbestos; (a) Richard Binzley of Cleveland, (b) Paul Edelman, who is not only an active ATLA member, but is a committee officer of the Personnel Committee, (c) John Bolles of New Orleans, (d) Jim Whitehead of Seattle, (e) Dick Leslie who is a Board member and also in the House of Delegates,

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and (f) Andy Port of San Francisco. Of course, Ex-Officio, there would be Jim Carroll our Board member liaison and also Howard McCormack the Vice-Chair.

I believe that I have an opportunity to obtain most of the information that will be forthcoming from the ABA, will distribute it to these members, and keep this as a general ABA Committee activity without creating a lot of administrative difficulty. Once we accumulate all of the information that may be compiled principally by the ABA, we could put a report together and update this at the May meeting. It is my estimate that by the Bermuda meeting this issue may be closed. Then the *Ad Hoc* group could disband.

If you wish, I will get this group together by correspondence. I believe we have all regions covered with knowledgeable people.

I truly believe that legislation in some form is going to be passed, and I believe that it is in the best interest of the MLA to have insight into this legislation on behalf of our members' interests, their clients and all of those who traditionally appreciate our input into uniform federal acts.

SUMMARY

I have recorded all of my votes on the issues and can answer any questions that you may have concerning any other general matters that may have transpired.

I appreciate the opportunity to represent the MLA at these meetings and to take action on behalf of MLA.

Respectfully
submitted,

James F. Moseley,
Chair

FORMAL REPORT OF THE COMMITTEE ON CLASSIFICATION SOCIETIES

The Committee met on April 30, 2003, with six members and four guests attending. The following topics were discussed:

1. The CMI initiative to develop agreed principles of liability for classification societies.

Following issuance of the European Community (“EC”) directive including provisions as to class society liability and limits of liability, as reported at the May 2002 meeting, there is no present prospect of further progress in connection with the CMI initiative.

As a related topic, in response to the sinking of the tanker PRESTIGE off the coast of Spain, in November 2002, the Commission of the EC on December 3, 2002, issued a Communication to the Parliament and Council [COM (2002) 681 final] calling on them to take certain steps to reduce the risk of pollution. These include closer monitoring of the performance of classification societies (p. 7) and penal sanctions against any person (including legal persons) who through gross negligence causes a pollution incident (p. 11).

On March 5, 2003 the Commission presented a draft proposal for a Directive of the European Parliament and Council on ship-source pollution [COM (2003) 92 final; 2003/0037 (COD)] providing in Article 6 *inter alia* that illegal discharge of polluting substances, and participation in such discharge are regarded as criminal offences when committed intentionally or by gross negligence; and that

[a]ny person (i.e. not only the shipowner but also ... the classification society or any other person involved) shall be subject to sanctions, including, where appropriate, criminal sanctions.

The proposed possible sanctions include, *inter alia*, deprivation of liberty (for natural persons) and fines which “shall not be insurable.”

The Committee discussed, at some length, the failure of the interested parties (class societies and shipowners/insurers) to reach agreement on classification society liabilities. The upshot of that discussion was that the Committee will undertake to ascertain whether there is a practicable way to encourage development of a uniform approach on the subject which would be mutually acceptable to the concerned parties in the current circumstances.

2. Other matters of interest

An interesting decision on choice of law involving a class society has been reported in *Sealord Marine v. American Bureau*, 220 F. Supp. 2d 260, 2002 AMC 2817 (S.D.N.Y. 2002). A vessel purchaser brought an action

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against American Bureau of Shipping (ABS) for damages allegedly sustained due to negligent inspection of the vessel. ABS moved for summary judgment. There was an issue as to whether the law of Greece or the United Kingdom applied to the dispute. Applying the *Lauritzen* triad of choice-of-law decisions, Judge Koeltl decided that Greek law governed the dispute. He rejected ABS's further argument that the memorandum of agreement (MOA) between seller and purchaser which provided for English law and London arbitration should be given effect, based on his conclusion that the purchaser's claim against ABS derived from principles of tort law and not the contract of sale. Finally, he concluded that under Greek law there were material issues of fact, so that summary judgment should be denied. We understand that no appeal has been taken from that decision.

Following the loss of the container vessel CARLA in the Atlantic several years ago, actions were brought by cargo interests in the Southern District of New York against Lloyds Register of Shipping ("LR"), the vessel's classification society. We understand that a trial is now in progress against the vessel's shipbuilder, and that possible further action against LR will depend on the outcome of the trial.

Respectfully
submitted,
Richard H. Brown,
Jr., Chair

FORMAL REPORT OF THE COMMITTEE ON CONTINUING LEGAL EDUCATION

The MLA Continuing Legal Education ("CLE") Committee prepared its Annual Report to the NYS CLE Board, which is necessary to maintain the MLA's status as an accredited provider of CLE credits in New York State. The CLE Committee also applied for reaccreditation as a CLE provider in the State of New York. Due to significant backlogs at the New York State CLE Board, this process has been delayed considerably. Although the MLA's status as an accredited provider was scheduled to lapse on April 3, 2003, the New York State CLE Board assures the CLE Committee that the MLA's accredited provider status will remain valid while the New York State CLE Board undertakes to review the MLA's application for reaccreditation.

Additionally, the CLE Committee guided coordinators of the MLA's various CLE Programs; discussed the mechanics of offering additional CLE credits to MLA members with the MLA Special Committee and the other

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Committee Chairs; provided CLE credits as a co-sponsor of the Connecticut Maritime Association's Conference "Shipping 2003"; 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. The CLE Committee has been liaising with the Comité Maritime International ("CMI"), the Global Maritime and Transportation School at the United States Merchant Marine Academy ("GMATS"), and the Baltic and International Maritime Council ("BIMCO") so that each organization can offer New York CLE credits to be issued by the MLA at upcoming programs which are found suitable.

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

Respectfully
submitted,

Lawrence J. Bowles,
Chair

FORMAL REPORT OF THE COMMITTEE ON MARINE FINANCE

I. INTRODUCTION

Chair, Sandy Knapp, introduced the guests in attendance and highlighted the various federal legislative actions and proposals that affect the committee members including the U.S. Patriot Act, final regulations by the U.S. Maritime Administration (MARAD) regarding fishing vessel mortgages and the USCG regulations regarding foreign leasing companies. She also mentioned *Gowen v. Quality One*, 244 F.3d 64 (1st Cir. 2001), a case regarding maritime liens and fishing permits. Chair Sandy Knapp also encouraged the committee members to visit the MLA website and to participate in the MLA strategic planning process. She encouraged the committee members to bring their young attorneys to the meetings. A list of attendees is attached as Exhibit A.

II. PRESENTATIONS

- A. Washington D.C. Update by Guest Barbara Burke of Thacher Proffitt & Wood, Chair of the Maritime Legislation Committee.

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Ms. Burke gave a very informative overview of legislation proposed and adopted recently by the federal government including the Patriot Act and its provisions regarding money laundering. She also discussed the recent Customs ruling regarding “passengers for hire” for coastwise trading purposes where Customs held that the entertainment of business guests aboard yachts, even though no fare was paid, is considered coastwise trade. This ruling significantly affects lending and ownership structure issues because a vessel in violation of such a ruling, and in violation of the coastwise laws, is subject to forfeiture. Ms. Burke mentioned that the proposed USCG foreign leasing company regulations, which have received numerous comments, are not yet final regulations.

B. Maritime Administration Update by Guest Richard Lorr, Esquire of MARAD.

Mr. Lorr gave the Committee a brief overview of recent issues addressed by MARAD including the fishing vessel regulations adopted by MARAD, and the regulations published April 30th regarding small passenger vessels. He also discussed the state of MARAD’s Title XI program.

C. United States Coast Guard Update by Guest Tom Willis, Chief, National Vessel Documentation Center.

D. Foreign Flag Updates and Security/Transparency Issues.

Mr. Willis described the USCG’s computer upgrades at the National Vessel Documentation Center, which should streamline the searching, and filing of instruments. He reported that any backlog experienced by practitioners was in the recreational vessel area and not in the commercial vessel area. Mr. Willis also reported that there have not been significant filings under the new Notice of Claim of Lien statutory provisions.

E. Foreign Flag Updates and Security/Transparency Issues.

Committee Member Guy “Clay” Maitland, of International Registries, gave a very informative presentation on security and transparency issues. This issue is being addressed by governments and lenders to track the actual ownership of vessels, which may be concealed by various means such as trusts, bearer certificates, and similar arrangements. There is a balance between keeping corporate information confidential, and keeping security and ownership issues transparent.

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Committee Member Zafins Hatzidimitriou, of Roussos & Hatzidimitriou Law Office in Greece, gave the Committee an update on Greek law as it affects vessel financing and ownership structures. This continues the Committee's review of foreign flag jurisdictions.

- F. Fishing Vessel and Fishing Permit Financing by Guest David Farrell of Connors & Farrels, Chair of Fisheries Committee and Steve Johnson, of Garvey Shubert & Barer.

Mr. Farrell discussed the Gowen case and gave the Committee insights into the affect the decision will have on financing fishing vessels and fishing permits (which are, more often than not, more valuable than the vessel itself).

Mr. Johnson gave us a summary of the federal regulations adopted with respect to mortgagees of fishing vessels and citizenship requirements. He warned the committee members of impending deadlines for certain filings with MARAD to qualify lenders as lenders or trustees.

III. SUBCOMMITTEE REPORTS

- A. Joint Subcommittee on Vessel Foreclosures and Insolvency.

Chair Sandy Knapp reported that she and Jim Bartlett (Chair of Practice & Procedure Committee) sent a letter to the MLA Board of Directors to request that the Board give this Joint Subcommittee a different name and combine it with the Subcommittee on Maritime Liens & Mortgages. The "new" Subcommittee would address the creation, perfection, and enforcement of maritime liens (including ship mortgages). She reported that Edward Powers, of Vandeventer Black agreed to become the chair of the reformulated Joint Subcommittee.

Committee Member Bob Zapf reported that revised Rules are being considered regarding notices to shipowners in the event of foreclosure.

- B. Maritime Liens and Mortgages.

Subcommittee chair Ed Powers, of Vandeventer Black reported on the Subcommittee's meeting by mentioning their discussion of conflict of laws issues in maritime lien cases, Notice of Claim of Lien filings, Mortgagees on fishing vessels, bankruptcy cases and the *Den Norske Bank v. Acemex* (English-Queen Court 2/26/03) case.

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C. Taxation

No report. The Subcommittee did not hold a meeting.

D. U.S. Coast Guard Documentation, U.S. Citizenship and Related Matters.

Chair Tom Whalen, of Carter Ledyard, reported briefly on the Subcommittee's meeting. The Agenda from the Subcommittee meeting is attached as Exhibit B. He mentioned the OEDC report regarding the "Ownership and Control of Ships" dated March 2003. Mr. Whalen also mentioned the various USCG issues that are being followed by the Subcommittee and the fact that Tom Willis also attended their meeting to discuss these issues. Further, Mr. Whalen reported that the Subcommittee is following, with much interest, the Customs ruling regarding passenger vessels and coastwise trade issues.

E. Yacht Financing

Chair Mark Buhler gave a summary of the Subcommittee meeting. The Agenda from the Subcommittee meeting is attached as Exhibit C. Of particular interest to the Yacht Financing Subcommittee, is the recent Customs ruling mentioned above because it affects business entertainment aboard yachts. The Subcommittee is following various other matters as evidenced by the attached Agenda. The Subcommittee heard a presentation by Bob Toney, President of National Liquidators.

IV. OLD BUSINESS

A. Unidroit Convention

The Unidroit is preparing a protocol on the international recordation of liens. There was no report at this time, but members are encouraged to follow this development.

B. Proposed Changes to Rule G

The changes to Admiralty Rule G have not been adopted but continue to be under discussion by the Justice Department and interested parties.

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C. Title 46 Recodification Project

There is no movement on the Title 46 Recodification Project, which Marjorie Krumholz, of Thompson Coburn, continues to monitor for the Committee. Chair Sandy Knapp directed the members to the MLA website where they can view the latest drafts and comments.

V. New Business

Ms. Knapp solicited volunteers for several new projects including the following: (i) an analysis of Section 1110 of the Bankruptcy Code and the rejection or acceptance of Vessel Charters/leases; (ii) CLE Credits for Finance Committee meetings, (iii) Recordation of Vessel Charters with USCG and other registries, (iv) a Newsletter for the Committee.

She reported that Ed Keech, of Fitzgerald Abbott & Beardsley, has already offered to investigate the possibility of a LISTSERV for the Committee and Eileen Brown, of Thompson Coburn, already offered to monitor customs rulings.

Ms. Knapp reminded everyone to attend the Fall meeting in Bermuda and promised CLE for the Marine Finance Committee meeting.

There being no new business the meeting was adjourned at 3:30 p.m.

Respectfully
submitted,
Sandra L. Knapp,
Chair

**FORMAL REPORT OF THE COMMITTEE ON
MARINE INSURANCE AND GENERAL AVERAGE**

The Committee met on April 30, 2003, at the offices of CNA Marine, 40 Wall Street, New York, New York.

Jonathan S. Spencer, Chairman of the Subcommittee on General Average, presented Howard McCormack, Esq., as a speaker, to discuss proposed revisions to the York Antwerp Rules to be considered at the CMI conference. The initiative to change the York Antwerp Rules is being driven by individuals in the British cargo insurance market, and the basic thrust is to restrict General Average strictly to attainment of safety,

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eliminating allowances of expenditure for the common benefit and safe prosecution of the voyage that have long been a basic tenet of United States adjusting practice.

George R. Zacharkow, Esq., Chairman of the Subcommittee on Cargo Insurance, reported that progress continues with respect to the Subcommittee's analysis of "All Risk" cargo insurance. Mr. Zacharkow also discussed new clauses proposed for use in the ocean cargo market regarding terrorism coverage.

John M. Woods, Esq., Chairman of the Subcommittee on Hull and Protection & Indemnity Insurance, reported that the Subcommittee will proceed with the Annotations Project concerning the "American Institute Hull Clauses (June 2, 1977)." The 1977 edition has been parsed into distinct clauses and/or topics. Assignments have been distributed to various committee members.

Mr. Woods also presented Joseph G. Grasso, Esq. as a speaker, who addressed the new federal legislation with respect to terrorism insurance coverage. Mr. Grasso's presentation highlighted the details of the legislation and commented on potential pitfalls.

Stephen V. Rible, Committee Chairman, introduced the Speakers for the Main Meeting: Mr. Joseph Howe and Mr. Thomas Costello, marine cargo underwriters for ACE, USA. These underwriters provided a thorough analysis of the business of underwriting Ocean Cargo Risks.

Gene B. George, Committee Vice Chairman, reported on publication of the Committee's Spring Newsletter containing an excellent review of the Terrorism Risk Insurance Act and recent marine insurance precedent. The Newsletter is available on the MLA Website. Members are encouraged to submit summaries or citations of recent insurance decisions to the Marine Insurance Committee via e-mail to: stephen.rible@mendes.com or ggeorge@rayrobcle.com.

Respectfully
submitted,

Stephen V. Rible,
Chair

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**FORMAL REPORT OF THE COMMITTEE ON
MARITIME ARBITRATION AND MEDIATION**

Since November, 2002 the Committee has met three times to discuss issues relating to Maritime Arbitration and Mediation and has been working on a variety of projects.

1. *Maritime Arbitration Act of 2003*

The Committee prepared draft legislation to be included in Title 46, relating to arbitration which are substantially identical to the Committee proposed amendment to the FAA as contained in The MLA Report, November 3, 2000, Document No. 753 at pgs. 12323 to 12333. In addition, a Resolution was prepared for submission to the membership at the general meeting on May 2, 2003. The Committee is discussing how to proceed in enacting the proposed bill.

2. *CMI Draft Instrument on Transport Law*

The Committee has prepared comments and a draft clause to the proposed CMI instrument such that it cannot be construed as applying to private contracts of carriage. The Committee continues to work with the COGSA committee on this project.

3. *MLA/SMA Liaison Committee*

The Liaison Committee has been working with the Society of Maritime Arbitrators on developing a seminar program for arbitrators and related matters.

4. *MLA Website*

In the future, the Committee will post its meeting notices and minutes of meetings on the MLA website.

Respectfully
submitted,

Donald J. Kennedy,
Chair

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108th CONGRESS
1st SESSION
H.R. _____

A. BILL

To amend Title 46, United States Code to facilitate maritime arbitration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. SHORT TITLE

This Act may be cited as the Maritime Arbitration Act of 2003.

SEC. 2. DOMESTIC AND INTERNATIONAL MARITIME ARBITRATION

(a) IN GENERAL – Subtitle III of Title 46, United States Code, is amended by adding at the end of the following new chapter:

CHAPTER 316 – DOMESTIC AND INTERNATIONAL MARITIME
ARBITRATION.

SEC.

- 31601. Consolidation of Separate Maritime Arbitration Proceedings
- 31602. Expedited Appointment of Arbitrator in a Maritime Arbitration
- 31603. Obtaining and Preserving Evidence for Use in Maritime Arbitration
- 31604. Modification of Awards in Maritime Arbitrations
- Sec. 31601. Consolidation of Separate Maritime Arbitration Proceedings

(a) In one or more maritime transactions and except as provided in subsection (c), upon motion of a party to an agreement to arbitrate, or to a maritime arbitration proceeding, the district court in the exercise of its admiralty jurisdiction may order consolidation of separate arbitration proceedings as to all or some of the claims, if:

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(1) there are separate agreements to arbitrate or separate maritime arbitration proceedings between the same persons, or one of them is also a party to a separate agreement to arbitrate or a separate maritime arbitration proceeding with a third person;

(2) the controversies subject to such agreements to arbitrate or arbitration proceedings arise in substantial part from the same maritime transaction or series of related maritime transactions;

(3) there is a common issue of law or fact creating the possibility of conflicting decisions in the separate maritime arbitration proceedings;

(4) in the event there is more than one agreement to arbitrate, they are similar and provide for the arbitration proceedings to be held in the same city; and

(5) the prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate maritime arbitration proceedings as to certain claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to a maritime arbitration agreement which prohibits consolidation.

Sec. 31602. Expedited Appointment of Arbitrator in a Maritime Arbitration

(a) In a maritime transaction where an agreement to arbitrate provides for each party to appoint an arbitrator,

(1) imposes no time limit for appointment of the second arbitrator, if the party demanding arbitration refers to this section in his notice to the other party of the appointment of the first arbitrator, and the other party within thirty (30) days after his receipt of the notice fails to give notice to the party demanding arbitration of the appointment of the second arbitrator,

(2) or if the agreement to arbitrate imposes a time limit for appointment of the second arbitrator, and the party against whom arbitration is demanded fails to give notice within the time limit, to the party demanding arbitration, of the appointment of the second arbitrator,

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then thereafter until the party demanding arbitration receives such notice of the appointment of the second arbitrator, the party demanding arbitration may appoint the second arbitrator and give notice to the other party of this appointment. The second arbitrator shall be a disinterested person with the same qualifications, if any, required by the arbitration agreement.

(b) In a maritime transaction, where the formation of an arbitration tribunal is incomplete, or in other exigent circumstances impairing a party's ability to obtain authorization from the arbitrators to seek court assistance, a district court acting within its admiralty jurisdiction and upon application by any interested party, may order that the testimony of a person or other evidence be preserved for use in future maritime arbitration proceedings, or terms that the court deems just and reasonable.

Sec. 31604. Modifications of Awards in Maritime Arbitrations

Without limitation of Title 9, Section 11, if an arbitration award is rendered in a dispute arising out of a maritime transaction,

(a) The arbitrators may correct an award to eliminate a typographical, arithmetic, or similar clerical error or omission in the award, provided that an application by a party so to modify the award is received by them within 30 days after the date the award was filed or delivered.

(b) If any party to an award applies to the arbitrators to correct the award under subsection (a) above, the periods for confirming, vacating, modifying or correcting the award under Title 9, Sections 9 and 12, shall not begin to run until the award on the application is filed or delivered. Their decision on the application shall be deemed part of and included in their final award.

FORMAL REPORT OF THE COMMITTEE ON MARITIME PERSONNEL

The Committee met on Thursday, May 1, 2003, in New York, New York at the spring meeting of the Association. Thirty seven members and guests participated in a lively meeting on proposed changes in legislation and important cases and developments affecting maritime personal injury practitioners.

1. Supreme Court Cases

In *Sprietsma v. Mercury Marine*, 537 U.S. 51, 123 S. Ct. 518 (2002), the issue was whether the Federal Boat Safety Act pre-empts state law in a case alleging that a boat propeller without a safety guard is defectively designed. The Coast Guard had considered the problem, but made no ruling. Once again, states' rights prevailed; there was no pre-emption. Had the regulatory body actually decided the issue, there would probably be pre-emption. *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000) (failure to install air bags as of the late 80's; decision was to phase in air bags and was a policy decision).

In the *State Farm v. Campbell* Case, 123 S. Ct. 1513 (2003) decided April 7, 2003, the Supreme Court set new constitutional limits on punitive damages in a ruling that the business community hailed as a major victory in the long running effort to shield corporate defendants from unconstrained jury awards.

The court overturned \$145 million in punitive damages that a Utah jury awarded against State Farm and that the Utah Supreme Court upheld. The jury had awarded \$1 million in compensatory damages to a Utah couple, State Farm policyholders, who sued the company for its refusal to settle a claim and for exposing them to personal liability beyond the limits of their policy for a car accident in which a jury found the husband liable. State Farm eventually paid the claim.

Justice Kennedy said the ratio of 145 to 1 resulted in a damage award that was "neither reasonable nor proportionate to the wrong committed." He called it "an irrational and arbitrary deprivation of the property of the defendant."

The most significant departure in the 6-to-3 decision was the Court's declaration that juries should generally not be permitted to consider a defendant's wealth when setting a punitive damage award. "The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award," Justice Anthony M. Kennedy said for the majority today.

Justice Kennedy said, punitive damages must relate to the harm done to the individual plaintiff and not to other plaintiffs, real or hypothetical. "A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business," he said, adding that

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without that constraint, defendants could be punished multiple times for the same conduct.

The *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996) decision had not set a particular ratio between punitive and compensatory damages that would be acceptable, but suggested that 4:1 would be a reasonable maximum in most cases. The court has now moved closer to setting a firm line. “When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee,” Justice Kennedy said.

The decision is undoubtedly not the court’s last word on punitive damages. Several times, Justice Kennedy noted the court was dealing with a case in which only economic, and not physical, harm had occurred, suggesting the court might make a more generous allowance for punitive damages in product liability cases involving injury or death.

Norfolk & Western Ry. Co. v. Ayers, 123 S.Ct. 1210 (2003), was an FELA case, so it is relevant to the Jones Act. Railroad workers sued their employer for negligently exposing them to asbestos and they developed asbestosis. The Supreme Court, Ginsburg, J., held that mental anguish damages could be recovered resulting from fear of developing cancer following the asbestosis. The *Metro North Commuter Railroad v. Buckley*, 512 U.S. 532, 114 S.Ct. 2396 (1997) Case was distinguished in that here the plaintiffs had, in fact, suffered a physical injury and therefore could recover pain and suffering damages based on the fear of contracting a worse disease. In addition, the Court held that the FELA allows full recovery for an injury and not apportionment if another cause may be involved. The only apportionment is for comparative negligence of the employee. There is joint and several liabilities otherwise and the burden is on the employer to seek contribution.

2. Asbestos Claims/Proposed Legislation

In other asbestos cases, merchant seamen, who allegedly were exposed to asbestos while working on U.S. Lines ships, now in bankruptcy, were held not entitled to equitable tolling of the statute of limitations because the prosecution of the suit was tardy and unresponsive to court orders. *In re United States Lines, Inc.*, 318 F.3d 432 (2nd Cir. 2003). Some cases were transferred to the Asbestos Multi District Litigation case in Pennsylvania.

Another asbestos, Jones Act claim was dismissed for failure to show that the defect caused or contributed to his cancer. The vessel manufacturer, the turbine engine manufacturer and the boiler manufacturers would not be held in a strict products liability claim. *Stark v. Armstrong World Industries*, 21 Fed. Appx. 371, 2001 WL 1216977 (6th Cir. 2001).

A Louisiana state court upheld a verdict for a barge worker claiming friable asbestos exposure. In *Hennegan v. Cooper/T. Smith Stevedoring Co.*, 837 So. 2d 96 (La. Ct. App. 4th Cir., Dec. 30, 2002), the award was \$2.5 million in general damages and \$596,770 in special damages, reduced by 20 percent.

A new asbestos liability reform calls for establishing national medical criteria to determine how claimants should be compensated for asbestos-related illnesses. The Asbestos Compensation Fairness act of 2003, which was recently introduced by Rep. Chris Cannon, R-Utah, would require that claimants prove that they suffer from an asbestos-related physical impairment before they can pursue a claim and sets out specific criteria for doing so. In addition, the measure would prohibit the awarding of punitive damages in asbestos-related civil suits. Non-economic damages would be limited to the greater of \$500,000 or three times economic damages in cases involving mesothelioma—an asbestos-related cancer—and the greater of \$250,000 or three times economic damages in cases involving other asbestos-related maladies. The measure also contains provisions regarding the consolidation of asbestos-related cases. There will be other bills.

3. Punitive Damages

In our last report, we mentioned a punitive damage award to Betty Bullock of \$28 billion, a smoker of Phillip Morris cigarettes. The jury verdict, in a Los Angeles Superior Court, was set aside and reduced by the judge to \$28 million in December 2002. She was dying of lung cancer.

A punitive damages award against Exxon for the Prince William Sound spill of the EXXON VALDEZ in 1989 was cut from \$5 billion to \$4 billion by the judge. There will now be another appeal on this issue. *In re EXXON VALDEZ*, 236 F. Supp. 2d 1043 (D. Ak. 2002). Exxon again shaved a large punitive judgment in Alabama. In a case alleging that Exxon cheated the state out of oil lease royalties, a \$3.4 billion verdict was set aside. The case was sent back for a new trial. An in-house counsel letter was admitted in evidence and was very damaging in the first trial.

In March, a punitive damages award against Leona Helmsley of \$10 million was reduced to \$500,000 and lost wages was reduced to \$54,000 from \$1.1 million. *Bell v. Helmsley*, Supreme Ct. N.Y. County, No. 111085/01, involved a suit by a hotel manager, who claimed he was fired because he was gay. Leona, “The Queen of Mean”, did not go over well with the jury, but the jury found he would have been fired anyway for using drugs and providing an untrue resumé. The judge, in reducing the awards, said he relied on limits set by the U.S. Supreme Court in *BMW v. Gore*, 517 U.S. 559, and other precedents. See, *New York Law Journal*, Mar. 5, 2003.

In a study by the Institute for Civil Justice of the Rand Corp., a middle of the road institute, dealing with improving court efficiency, the Institute noted in 1987 that punitive damages were not out of control. This study has been used in court decisions. See, *National Law Journal*, 20 Jan. 2003.

Certiorari was denied by the U.S. Supreme Court in a case where a \$3 million punitive damages award was entered against a tire manufacturer in Mississippi. The award was nearly ten times the compensatory award. The writ petition cited *BMW v. Gore* and *Cooper Industries v. Leatherman Tool*. 532 U.S. 424, 121 S. Ct. 1678 (2001). *Cooper Tire & Rubber Co. v. Tuckier*, 123 S. Ct. 97 (2002).

In a general maritime products liability case, a Jones Act seaman and his wife were able to claim punitive damages. The wife was able to recover for loss of consortium. *Consolidated Coal Co. v. W.W. Patterson Co.*, 228 F. Supp. 2d 764 (D.C. W. Va. 2001). An allegedly defective winch on a barge was at issue. The Court held that *Yamaha v. Calhoun* trumped *Miles v. Apex* (which was distinguished). As to punitive damages, they were allowed in *In re Horizon Cruises Litigation*, 101 F. Supp. 2d 204, 214 (S.D.N.Y. 2001), which involved a fraud by a manufacturer. Other cases are cited.

However, a Jones Act seaman was denied the right to recover punitive damages on a claim of willful failure to provide a seaworthy vessel. *Ponder v. M/V CHILBAR*, 2002 WL 31725912 (D.C. Ga. May 13, 2002).

4. Jurisdiction

The Court of Appeals for the 11th Circuit has held that an airplane is an “appurtenance” of an aircraft carrier, so that an errant bomb causing injury

ashore came within the admiralty jurisdiction. Suit therefore had to be brought under the Suits In Admiralty Act, not the Federal Tort Claims Act. The Extension of Admiralty Jurisdiction Act applied and it requires that a notice prior to suit be served in suits against the U.S. Six months must elapse prior to suit. The requirement was strictly followed and plaintiff lost out. *Anderson v. U.S.*, 317 F.3d 1235 (11th Cir. 2003).

An unusual case found jurisdiction where an injured seaman developed psychological problems sufficient to hack his grandmother to death. Suit was allowed by next of kin, including loss of society and other damages under state law, citing the *Yamaha v. Calhoun* case. Jurisdiction was under the Extension of Admiralty Jurisdiction Act. *Crear v. Omega Protein, Inc.*, 2002 WL 1941447 (E.D. La. Aug. 21, 2002).

Death in a scuba diving accident invoked General Maritime Law, rather than Puerto Rican law. As to waiver, both rules of law were held to be similar and the case was dismissed. *Olivelli v. Sappo Corp.*, 225 F. Supp. 2d 109, 2002 WL 31159137 (D. P.R. 2002). Various similar cases are discussed and the decision does cite *Yamaha v. Calhoun*, *Grubart v. Great Lakes*, *Garris v. Norfolk Shipbuilding* and *Moragne v. States Marine Lines*, the leading Supreme Court cases.

Recruitment of seamen in a given jurisdiction does not subject the shipowner to suit in that jurisdiction. *Estigoy v. OSG Car Carriers, Inc.*, 33 Fed. Appx. 844, 2002 WL 460399 (9th Cir. 2002). The Second Circuit has held similarly for S.I.U. recruitment through its Brooklyn hiring hall.

5. Seaman and Vessel Status

O'Hara v. Weeks Marine, Inc., 294 F.3d 55, 2002 WL 483539 (2nd Cir. 2002). Plaintiff was hired for dock building. Two dumb barges were used, moved as needed. They had not been moved for two months. The Jones Act status was denied as the vessels were not in navigation and plaintiff's connection to the vessels was insufficiently substantial in terms of duration and/or nature. His connection to the barges was sporadic.

In *Eckert v. U.S., et al.*, 232 F. Supp. 2d 1312 (S.D. Fla. 2002). An acoustical engineer was injured at a Navy test center. His Jones Act claim was a question of fact involving the employer-employee relationship.

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In *Pike v. Woods Hole Oceanographic Institution*, 233 F. Supp. 2d 198 (D.C. Ma. 2002), the court held that the Jones Act pre-empts a Massachusetts statute imposing a cap on suits against charitable institutions.

In *Stewart v. Dutra Const. Co., Inc.*, 230 F.3d 461, 2001 AMC 1116 (1st Cir. 2000) the dredge in question was held not to be a vessel in navigation. The dredge was moored. The Court followed its ruling in *DiGiovanni v. Traylor Bros.*, 959 F.2d 1119 (1st Cir. 1992).

6. Jones Act Negligence and Unseaworthiness

In *Derouen v. Mallard Bay Drilling*, 808 So. 2d 694 (La. App. 1st Cir. 2001), the plaintiff was injured on a drilling rig. While Plaintiff was checking pressure on a barite line, it exploded. On appeal, a verdict for Jones Act negligence was upheld, but an unseaworthiness finding was reversed. The line should have been bled off to reduce pressure before the accident.

In *Greer v. Trico Marine Services*, 2002 WL 988014 (D.C. La. 2002) a roustabout was injured when he stepped backward to avoid being struck by a load. It was held that the mate was negligent in failing to keep the load in a safe position.

In *Louis v. Dept. of Transportation*, 819 So. 2d 379, 2002 WL 992109 (La. App. 5th Cir. 2002), a ferry deckhand was injured during a procedure to realign the apron of a pontoon bridge. The employer was found negligent in not properly instructing the plaintiff, who was illiterate and known to have some mental impairment. As to unseaworthiness, there was evidence that a winch was in need of repair and plaintiff was injured by a spinning winch handle.

In *Cape Fear, Inc. v. Martin*, 312 F.3d 496 (1st Cir. 2002), the appeals court upheld a denial of limited liability where the proof was that the clamming vessel was overloaded when it sank and two crew members died. The vessel was unseaworthy and the owner affirmatively approved the overloading.

7. Maintenance and Cure

In *Boudreaux v. U.S.*, 280 F.3d 461 (5th Cir. 2002), an injured plaintiff was found 70 percent negligent and his award for future medical expenses was cut. However, maintenance and cure cannot be reduced. Cf., *Bloom v.*

Weeks Marine, Inc., 227 F. Supp. 2d 1273 (D.C. Fl. 2002) (maintenance is due, even if injury is due to seaman's own negligence). *Thomas v. New Commodore Cruise Lines*, 202 F. Supp. 2d 1356 (D.C. Fl. 2002). An HIV positive seaman could not collect M&C. His employment was contingent upon being free of HIV or a venereal disease.

In *Muhammad v. Diamond Offshore Co.*, 822 So. 2d 869 (La. App. 3rd Cir. 2002), M&C was withheld because plaintiff could not show when he would lose weight so as to make surgery effective. A suit in the future might be available to show when he reached maximum cure.

8. Longshoremen's Compensation Act

In *O'Hara v. Weeks Marine, supra*, the shipowner could be held liable under the duty to intervene. Because the shipowner's crane was disabled, a shipowner employee directed the plaintiff to lift heavy forms all by himself. This was a jury question.

The saga of *Gravatt v. City of N.Y.*, came to an end with 226 F.3d 108, 2000 AMC 2705 (2nd Cir. 2000). Plaintiff was a dock builder suing his employer as owner of a vessel. The district and appellate courts held that the plaintiff's employment made him a "harbor worker" covered by the LHWCA and that his employer was acting in a "dual capacity" as both employer and vessel owner. The Second Circuit held that the employer's negligence that caused the plaintiff's injury was committed only in its role as employer and not in its role as owner of the barge. The plaintiff was not entitled to a tort remedy.

In *Cooper T. Smith v. Liuzza*, 293 F.3d 741 (5th Cir. 2002), a Longshoreman died of exposure to asbestos. At issue was whether death benefits could be offset by erroneously paid disability benefits. The Court held that, under 33 U.S.C., § 914(j), an employer cannot recover benefits from an employee, but only from "advance" payments. The award was not an advance payment.

In *Newport News Shipbuilding v. Stille*, 243 F.3d 179, 2001 AMC 1247 (4th Cir. 2001), here, the Court strictly applied the last employment rule, even though an employee had worked for the last employer for nine months and the prior employer for 30 years.

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In *Brown v. Nominator Shipping Corp.*, 2001 WL 631324 (D.C. La. 2001) a longshoreman was injured and alleged an improper stow. A question of fact was raised as to the shipowner's duty and knowledge as there was a prior accident two days before.

In *Bourda v. Seacor Marine, Inc.*, 2002 WL 10458 (D.C. La. 2002), the shipowner could be held liable for active control during a tank cleaning. Liability is not relieved, even if the hazard is open and obvious.

A defense ruling occurred in *Jackson v. Egyptian Navigation Co.*, 222 F. Supp. 2d 700 (D.C. Pa. 2002), where plaintiff could not show the shipowner had notice of a defective plank and the situation was open and obvious.

In *Boomtown Belle Casino v. Bazor*, 58 Fed. Appx. 598 (5th Cir. 2003), the Fifth Circuit ruled that the LHWCA does not apply to the chief engineer of a casino boat under construction. A casino was held a recreational operation exempt from the Act's coverage.

9. Forum Non Conveniens

A forum selection clause was upheld as an important factor in transferring a case. *Elliott v. Carnival Cruise Lines*, 231 F. Supp. 2d 555 (S.D. Tx. 2002). Another interesting case, also discussing major authorities, is *In Re Fantome*, 232 F. Supp. 2d 1298 (D.C. Fl. 2002). The Court held that, despite control from the U.S. by U.S. shareholders, our law would not apply for the death of foreign crewmen aboard a foreign flagged schooner owned by a Panamanian corporation. The deaths occurred in Honduran waters during Hurricane Mitch.

In our previous report, we mentioned *Wallis v. Princess Cruises, Inc.*, which determined that language on a passenger ticket was not precise enough to enforce a damage limitation in Athens Convention cases. The Athens Convention applies to most cruise line tickets for voyages outside the U.S. The citation is 306 F.3d 827 (9th Cir. 2002).

10. Matters of Proof

The U.S. Supreme Court upheld a federal statute protecting certain records from being admitted into evidence, overruling a state court decision on discovery. The statute protected certain road hazard records

compiled by state agencies. The decision is relevant to the privilege accorded U.S. Coast Guard marine casualty investigations and aviation accident privileges for the NTSB. *Pierce County v. Guillen*, 537 U.S. 129, 123 S. Ct. 720 (2003).

The U.S. Court of Appeals for the 11th Circuit ruled that supervisory personnel might provide opinion testimony in maritime matters within their cognizance. On the issue of collecting a bill for work performed in a repair yard, plaintiff could use its own personnel as experts if they have the requisite experience or training. *Tampa Bay Shipbuilding Co. v. Cedar Shipping Co., Ltd.*, 320 F.3d 1213 (11th Cir. 2003)

11. IMO/ILO *Ad Hoc* Working Group

The Legal Committee of IMO is meeting in London, commencing 28th April, to review financial security requirements of passenger ships. In addition, a review will be made of the status of claims for death, personal injury and abandonment of crewmembers. (The Joint IMO/ILO *Ad Hoc* Expert Working Group, in which the MLA participated.) Also involved will be an international conference on the revision of the Athens Convention dealing with passenger ship liability.

12. Tort Reform – The Medical Liability Bill

The House passed legislation on March 13, 2003, imposing a \$250,000 limit on jury awards for pain and suffering in medical malpractice cases, arguing that frivolous lawsuits are driving medical liability premiums out of control and forcing doctors out of business.

The bill the House passed does not limit jury awards for medical and funeral expenses. But the caps it imposes on pain and suffering damages apply not only to lawsuits filed against doctors, but also to those filed against insurers, pharmaceutical companies and medical devices.

13. Miscellaneous

The U. S. Federal Maritime Commission is contemplating changes in regulations relating to the financial responsibility of passenger vessels for non-performance. The comment period was to end April 8, 2003. See, 67 Fed. Reg. 79029.

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The U.S. Department of Transportation forwarded to Congress its formal proposals to codify those parts of Title 46, which have not yet been recodified. If further action occurs in this session of Congress, changes must meet the Maritime Security Act of 2002.

The Maritime Personnel Committee has been approached to take over the liability issues under the Longshoremen's Act from the Stevedore and Terminal Operations Committee. The MLA is to work this out.

I would like to thank Paul Edelman, Esq. for helping prepare these minutes.

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
NAVIGATION COAST GUARD AND
GOVERNMENT REGULATION COMMITTEE**

The Spring meeting of the MLA's Committee on Navigation Coast Guard and Government Regulation was called to order at 4:12 p.m. by Chairman Dennis Bryant at the offices of Haight Gardner Holland & Knight, LLP, 195 Broadway, 24th Floor, New York, NY on April 30, 2003.

In attendance were the MLA members listed on Exhibit A.

The agenda of the meeting is attached as Exhibit B.

Chairman Bryant began by introducing the guest speakers for the meeting including Commander Steve Poulin and Lieutenant Commander Chuck Dahill of the Coast Guard, Richard Lorr of MARAD, Amy Larson of the Federal Maritime Commission and William Storz of the Military Sealift Command. Commander Poulin gave the first report.

As the legal advisor for the Coast Guard's Maritime Security Directorate, Commander Poulin is at the center of all of the Coast Guard's maritime security initiatives. He served as a member of the U.S. Delegation

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to the Diplomatic Conference in December 2002 at which the International Maritime Organization (“IMO”) debated and adopted the amendments to SOLAS 1974 which constitute the new International Ship and Port Facilities Security (“ISPS”) Code. Commander Poulin spoke in very upbeat terms about the incredible coordination between the U.S. delegation and the rest of the IMO such that the ISPS Code looks very much like what the expected regulations under the U.S. Maritime Transportation Security Act (MTSA) are likely to be.

Both of those sets of regulations call for study of port and ship vulnerabilities and planning security measures keyed to various levels of threat. The security plans will contain certain core elements including considerations as to ship or facility access, handling of cargo or stores, restricted areas, designated security officer, and training and drills.

Under the ISPS Code, the vessels security plans will be considered and certificates will be issued by the member states. The Coast Guard’s MTSA regulations will include specific lists of requirements to obtain the certificates and for implementing the plan.

Commander Poulin made a point of saying that the Coast Guard will be very aggressive in the enforcement of both its regulations and the ISPS Code. The model of the Port State Control program, heretofore used for safety issues, will be employed in order to make determinations as to which vessels or facilities ought to be targeted for boarding or inspection.

Commander Poulin also mentioned that there were a number of other aspects of the SOLAS amendments including requirements for a ship security alert alarm system, a continuous ownership synopsis record and the automated information system (AIS).

The MTSA did not itself include a time line for regulatory action. However, it required that action be taken “as soon as practicable”. The Coast Guard has taken on a goal of putting out an Interim Final Rule by 1 July 2003 with an effective date of 1 July 2004. This later date will match the implementation date for the ISPS Code set by IMO.

Answering various questions from the assembled Committee, Commander Poulin indicated that the ISPS did allow plans to be drawn in Spanish, French or English but indicated that a smart owner will always have an English translation available.

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The regulations regarding marine transport worker credentials are being developed by the Coast Guard and the TSA. Such a credential will have to be carried by the crew and labor force and will probably have some type of “biometric” identifying component.

The problem of identifying the ownership of a vessel was not specifically tackled by IMO because of the problem of keeping track and identifying the same. The SOLAS amendments instead focus on the “operational control” of a vessel.

Commander Poulin also pointed out that although Part B of the ISPS Code was not “mandatory” it must in actuality be followed in compliance with Part A. The Coast Guard will clearly be looking for implementation of the suggestions and recommendations in Part B in evaluating the plans submitted under Part A. In response to the final questions, Commander Poulin indicated that Coast Guard had estimated that the regulations under MTSA would cost \$6 billion to implement over the first 10 years. The Coast Guard is definitely planning to outsource the function of plan review.

The next speaker was Lieutenant Commander Chuck Dahill of the Coast Guard. Mr. Dahill has become the Coast Guard’s point person with regard to questions raised by our committee pertaining to the involvement of counsel in marine casualty investigations. The ad hoc subcommittee chaired by Andrew Anderson of Miami had expressed the view that in many informal investigations, witnesses had been spoken to by the Coast Guard investigating officer without being given an opportunity to secure counsel. The Coast Guard, according to Mr. Dahill, does not think that there is a serious problem in the field. They believe that IOs are trained and knowledgeable with regard to the regulatory allowance of counsel to any witnesses whether it be a subpart 4 or subpart 5 investigation. The Coast Guard is nevertheless willing to meet with the ad hoc committee at anytime to discuss the matter. Additional volunteers for the ad hoc committee include Rob Fisher of New Orleans and Ann Michelle Higgins of Philadelphia. Finally, Mr. Dahill suggested that if a problem is encountered with a particular IO on a particular investigation, it would be appropriate to contact the members of his chain of command, beginning either with the Senior Investigating Officer or the Commanding Officer of the unit. He indicated that there was always a duty officer available at District Legal but jumping over the head of the local unit command structure might not be the most politic thing to do.

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A report on Maritime Security Developments was given by Jeff Moller, the Chairman of the relevant subcommittee. Mr. Moller's talk addressed the Bureau of Customs and Border Protection ("BCBP") initiatives and their associated controversies. The BCBP has announced that the "enforcement" deadline for the 24-Hour Rule, under which Customs requires receipt of the manifest for any U.S. bound cargo 24 hours in advance of its loading aboard a ship in a foreign port, has now passed. The expected train wreck has not come about although there have certainly been, according to various shipping associations, a significant impact in terms of shipping time, which, of course, translates to money. The BCBP intends to deal with infractions of the 24-Hour Rule by marking the cargo as "no load" which designation serves to delay the shipment.

The C-TPAT Program is apparently going very well. Customs indicates that the vast majority of the major shippers have signed up. Customs is trying to encourage those major shippers to impose upon their entire web of vendors a requirement to assure that top-to-bottom security programs are in place.

The Container Security Initiative (CSI), under which BCBP has made reciprocal arrangements with many ports around the world, has had a couple of interesting ramifications. The first is that the European Union reacted to the fact that the United States Government had signed individual deals with a number of the ports in Europe without negotiating on a blanket basis with the EU. The EU believes itself to be in charge of any and all trade matters on behalf of all the member countries. The EU has even gone so far as to file an interference action against such countries as Germany, France and the U.K. That action was filed in January of 2003 and has not been subsequently reported upon in the press.

CSI has also come under scrutiny because of its apparent influence on trade patterns. Many developing countries feel that the cargo destined to their port will be shipped instead to major ports which have CSI agreements in place with United States. The ports in those developing countries may therefore be further marginalized because many shippers believe that the CSI will have a dramatic effect in terms of savings of shipping time for customs inspections.

The next speaker was given by Bill Storz, who described the successful deployment of the Military Sealift Command in the recent Iraqi conflict. He stated that at the height of the action some 120 ships were at sea in support

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of the effort. Many of those ships had 12-man Marine or Army units on board for security. The feared shortage of qualified mariners to crew the vessels did not materialize. The big problem was that there were very few ports in which the vessels could unload. This caused a substantial backlog of cargo handling.

Ms. Amy Larson, the Acting General Counsel of the Federal Maritime Commission, was next to report. She indicated that Paul Anderson of Florida had been nominated to the Commission recently by President Bush. She stated that some interesting meetings of the FMC were coming up, including a May 6th event at which certain NVOCC complaints regarding the Pacific Rate Agreement would be heard and June 11th, at which the Passenger Vessel Operating Financial Responsibility Rule would be considered. Also of interest is the fact that review of shipping conditions in China is still ongoing. MARAD, FMC and the State Department have all met with the Chinese delegation with regard to the issues.

The FMC believes that it has some expertise to bring to bear in terms of cargo container security and has recently participated in a governmental container security system working group. The FMC has requirements with regard to cargo descriptions and authority under the Shipping Act to determine that certain misdescriptions can be unreasonable trade practices. This gives the FMC some jurisdiction over business people and port security issues.

David Dickman of Washington, DC discussed recent criminal prosecutions in the maritime sector. The Department of Justice continues to target ships for perceived pollution incidents and for falsification of required records, such as the Oil Record Book.

MEETING ADJOURNED

AGENDA

Maritime Law Association of the United States

Meeting of Committee on Navigation, Coast Guard, and Government
Regulation

April 30, 2003 (Wednesday) at 4:00 p.m. to 6:00 p.m.
Haight Gardner Holland & Knight
195 Broadway, 24th Floor, New York, NY

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U.S. Coast Guard & IMO Activities (CAPT Joseph Ahern, USCG or a player to be named later)

Maritime Administration Activities (John Patrick Wiese, MARAD)

Federal Maritime Commission Activities (Amy Larson, FMC)

Military Sealift Command (William Storz, MSC)

Maritime Security (Jeff Moller)

Maritime Legislation (Larry Kiern)

Criminal Liability (David Dickman)

**FORMAL REPORT OF THE COMMITTEE ON
PRACTICE AND PROCEDURE
CONCERNING NOTICE OF ARREST REQUIREMENTS**

The Committee on Practice and Procedure is concerned that the current statutory requirements regarding notice of an action to enforce a maritime lien, i.e., an arrest, may not include parties that the courts will feel need to receive notice in order to comport with due process requirements. It also is concerned that the provisions of Supplemental Rule C dealing with notice creates a potential for confusion by only referencing statutory notice requirements for foreclosure of a preferred ship mortgage, when those notice requirements also apply to other actions to enforce maritime liens.

The statutory provision specifying the notice requirements for a civil action brought to enforce a preferred mortgage lien or other maritime lien *in rem* is 46 U.S.C. § 31325(d), which states:

- (1) Actual notice of a civil action brought under subsection (b)(1) of this section,¹ or to enforce a maritime lien, must be given in the manner directed by the court to—
- (A) the master or individual in charge of the vessel;
 - (B) any person that recorded under section 31343(a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; and

¹ The referenced subsection, 46 U.S.C. § 31325(b)(1), sets out the procedures by which a mortgagee can enforce a preferred mortgage lien on a vessel.

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(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

Supplemental Rule C(4) of the Federal Rules of Civil Procedure sets out the notice requirements when property that is the subject of an *in rem* action has not been released within ten days after the arrest. It references, however, the notice requirements of 46 U.S.C. §§ 31301 *et seq.*, 46 U.S.C. § 31325(d)(1), saying that it does not affect those requirements, but in doing so refers to those requirements as relating only to an action to foreclose a preferred ship mortgage:

No notice other than execution of process is required when the property that is the subject of the action has been released under Rule E(5). If the property is not released within 10 days after execution, the plaintiff must promptly – or within the time that the court allows – give public notice of the action and arrest in a newspaper designated by court order and having a general circulation in the district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer. This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under 46 U.S.C. §§ 31301 *et seq.*, as amended.

The Committee on Practice and Procedure believes that 46 U.S.C. § 31325(d)(1) should be amended to expand the categories of persons or entities who must be given notice of an *in rem* maritime action. The statute should also be amended to reflect that property other than a vessel can be arrested. The Committee also believes that a court should only waive the notice requirement if it is satisfied that the person entitled to notice cannot be found – after a search that is not restricted just to the United States. The Committee proposes that 46 U.S.C. § 31325(d) be amended to read as follows:²

(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

² New language is in bold, and stricken language is lined through.

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- (A) **the owner of the vessel or other property;**
- (B) the master or individual in charge of the vessel;
- (C) any person that recorded under section 31343(a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; ~~and~~
- (D) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel; and
- (E) any other person known to have an interest in or against the vessel or other property.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found ~~in the United States~~.

In addition, the Committee on Practice and Procedure proposes that the last sentence of Supplemental Rule C(4) be amended so that it is consistent with 46 U.S.C. § 31325(d)(1) and clarifies that the notice requirements apply to all actions to enforce maritime liens. As amended, this sentence would read as follows:

This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage or maritime lien under 46 U.S.C. §§ 31301 *et seq.*, as amended.

The Committee on Practice and Procedure believes that these changes will address concerns relating to who must be given notice of an arrest action and clarify that the notice requirements apply to all maritime arrest actions.

Following the lead of our friends in the United States Coast Guard, the Committee intends that this report will constitute the equivalent of a Notice of Proposed Rulemaking. We, therefore, ask the MLA membership to provide us with comments concerning these proposed statutory and rule changes by October 1, 2003. Please mail or e-mail your comments and suggestions to the Committee Chair at the address that follows. We encourage your participation.

Respectfully
submitted,

James W. Bartlett,
III, Chair

**FORMAL REPORT OF THE COMMITTEE ON
UNIFORMITY OF U.S. MARITIME LAW COMMITTEE**

In *Sprietsma v. Mercury Marine*, 537 U.S. 51, 123 S. Ct. 518, 2003 AMC 1 (2002), the United States Supreme Court held that the Federal Boat Safety Act, 46 U.S.C. § 4301 *et. seq.*, does not preempt state common law tort claims.

Plaintiff's wife died in 1995 after falling from a speedboat and being hit by the motor's propeller blades. Plaintiff sued the engine designer in Illinois state court for common law negligence. Plaintiff alleged that the engine should have been equipped with a propeller guard. The trial court dismissed the action and the appellate court affirmed, finding that the Federal Boat Safety Act (FBSA) expressly preempted the action. The Illinois Supreme Court affirmed dismissal, but on grounds of implied preemption.

The FBSA, passed in 1971, was enacted to promote greater uniformity of boating laws and regulations and to promulgate national minimum safety standards for recreational vessels. The Department of Transportation charged the Coast Guard with authority to issue the regulations to be included in the Act. In 1990, the Coast Guard decided not to regulate propeller guards based on its conclusion that, among other things, propeller guards might increase potential for blunt trauma injuries.

The United States Supreme Court granted *certiorari* and reversed and remanded. In a unanimous opinion, the Court ruled that the FBSA did not preempt plaintiff's cause of action. The Court found that common law tort claims were not encompassed by the Act's express preemption clause, which applies to "a [state or local] law or regulation." That conclusion was reinforced by the Act's savings clause, which states that compliance with the Act's requirements does not relieve a person from common law liability. *Sprietsma*, 123 S. Ct. at 526.

The Court also relied on the fact that the Coast Guard does not require the use of propeller guards. The Court reasoned that decision not to regulate that aspect of boating safety is consistent with intent to preserve state regulatory authority. *Id.* at 527-28. Further, the Coast Guard's decision did not convey an "authoritative" message of a federal policy against propeller guards. *Id.* at 528.

The Court rejected the Illinois Supreme Court's holding that the FBSA impliedly preempted plaintiff's claim. The Act does not require the Coast Guard to promulgate comprehensive regulations covering every aspect of

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boating safety, or to certify every vessel subject to its jurisdiction. Further, the Court determined that the FBSA does not convey a clear and manifest intent to completely occupy the field of boat safety regulation so as to foreclose state common law remedies. *Id.* at 529.

The Court rejected the engine designer's argument that preemption was required in order to preserve federal uniformity. In the opinion of the Court, that goal did not justify displacement of state common law remedies that compensate accident victims and their families and promote boating safety. *Id.* at 530.

The Maritime Law Association submitted an *amicus curiae* brief on behalf of respondent, Mercury Marine. MLA President, Raymond P. Hayden, Joshua S. Force of New Orleans, J. Patrick Cooney of Houston and Donald C. Greenman of Baltimore prepared the *amicus curiae* brief.

Respectfully
submitted,
Kimbley A.
Kearney, Chair

**FORMAL REPORT OF THE STUDY GROUP ON
UNESCO CONVENTION ON
PROTECTION OF UNDERWATER CULTURAL HERITAGE**

The Convention on the Protection of Underwater Cultural Heritage was adopted by UNESCO at a meeting of its General Conference on November 2, 2001. The UCH Convention will enter into force three months after the deposit of the 20th instrument of acceptance, approval, or ratification. The text of the Convention can be found on the UNESCO website at www.unesco.org.

The Convention has not yet entered into force and it is questionable whether the required number of approvals will ever be obtained. The United States Government remains opposed to the Convention. The Study Group participated on the United States Delegation to the UNESCO meetings which led to the adoption of the Convention and the MLA has consistently opposed adoption of the Convention.

We will continue to monitor the position.

Respectfully
Submitted,
John D. Kimball,
Chair

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

Held at the offices of Jones, Walker, Waechter, Poitevent,
Carrere & Denegre
of New Orleans
on
March 18, 2003
9:30 a.m.

The meeting was called to order by President Raymond P. Hayden at 9:30 a.m. In addition to President Hayden, the following officers were present:

Thomas S. Rue, First Vice President
Lizabeth L. Burrell, Second Vice President
Warren J. Marwedel, Secretary
Patrick Bonner, Treasurer
Philip A. Berns, Membership Secretary
William R. Dorsey, III, Immediate Past President

The following Board members were present:

James K. Carroll	Armand J. Paré
Robert G. Clyne	Alan Van Praag
James Patrick Cooney	Mary Elisa Reeves
Robert S. Glenn, Jr.	James F. Whitehead, III
Glenn G. Goodier	Robert J. Zapf
Richard M. Leslie	JoAnne Zawitoski

At the invitation of President Hayden, Past President James F. Moseley, of Jacksonville, was also present at the meeting.

SECRETARY'S REPORT

On January 15, 2003, the Officers met at the Army Navy Club in Washington, D.C. The Officers discussed the agenda for 2003, including the Association's participation in international and domestic activities. President Hayden outlined his calendar for the year. Treasurer, Pat Bonner, reviewed projected costs for 2003. Membership Secretary Phil Berns reported on the status of revisions to the directory and publication dates.

The Officers recommended a dues increase of \$10.00, which was subsequently passed by the Board of Directors in late January, by electronic vote.

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After the meeting, the Officers had lunch with several members of various governmental legal departments that impact the maritime practice. There were legal representatives from Coast Guard, State, Navy, Commerce, and Justice.

Immediate Past President William Dorsey, III, of Baltimore reported on the *Sprietsma v. Mercury Marine* decision. He indicated that the Supreme Court did not address maritime law issues. The Court ruled that although Mercury Marine contended that the case was governed by maritime law, because this argument was not raised below, it was waived.

Upon motion duly made and seconded, the minutes of the October 31, 2002, meeting of the Board of Directors and the Secretary's Report were unanimously approved and accepted. The minutes of this meeting will be published in the Spring 2003 issue of the Proceedings.

TREASURER'S REPORT

Treasurer Patrick J. Bonner, of New York, presented the Treasurer's Report for the three months ending October 25, 2002. He reported on the cash on hand, and indicated that dues collections were running at about 92%. He indicated there are approximately 69 fewer dues paying members than last year, but the collection rate seems to be a little higher this year. A discussion was held to consider various ways of reducing printing costs. Members will be encouraged to receive their materials electronically, instead of in printed form, to lower costs and to accelerate the delivery of materials.

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns, of San Francisco, presented nine applicants for Associate Lawyer Membership, one application for Judicial Membership, as well as one application to change from Proctor to Judicial Membership. Upon motion duly made and seconded, the candidates were unanimously elected.

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Mr. Berns also reported, with regret, the death of the following members:

James M. Leonard of Hunting, New York
Edward J. Heine, Jr. of New York, New York
Robert H. Sommer of Montville, New Jersey
James W. Crabtree of Charlotte, North Carolina
Robert J. Williams of Garden City, New York
Stephen D. Johnson, Jr. of Metairie, Louisiana

Mr. Berns reported that the Association had a total membership of 3,157. Of that number, 1,527 are Proctor Members.

Mr. Berns also indicated that the submission date for changes to the membership directory will be April 11, 2003, and that changes for officers, directors, chairs and vice-chairs will be May 16, 2003 .

Upon motion duly made and seconded, the Memberships Secretary's Report was unanimously approved and accepted, including the list of all successful candidates for membership. A copy of Mr. Berns written report will be appended to the original of these minutes.

INTERNATIONAL ACTIVITIES

COGSA/UNCITRAL Working Group

President Raymond P. Hayden reported that the MLA Working Group attended the UNCITRAL London meeting on February 27 and 28, 2003. The Working Group members are Past President Chester D. Hooper of New York, George Chandler of Houston, Professor Robert Sturley of Austin, and Vincent DeOrchis of New York. There will also be a follow up meeting in New York during the last week of March and the first week of April, 2003. The Working Group indicates that issues are being worked out, and that a new draft of the Convention on Transport Law should be available soon.

The MLA Working Group works very closely with the head of the U.S. Delegation, Mary Helen Carlson, of the State Department's Office of Assistant Legal Advisor for Private International Law.

Comité Maritime International (CMI) Colloquium

President Raymond P. Hayden reported that the CMI Bordeaux Colloquium will be June 11, 12 and 13. It is expected that the meeting will

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be attended by President Hayden, Past President Howard McCormack, First Vice President Thomas Rue, Second Vice President Lizabeth Burrell, and a representative from the CMI Committee as well as the Electronics and Trade Committee. Wednesday, June 11, 2003, will have meetings on electronic trade and general average. On Thursday, June 12, 2003, there will be meetings on transport law. On Friday, June 13, 2003, there will be meetings on Place of Refuge, marine insurance, international maritime law and the CMI Assembly.

There will be a formal CMI conference in Vancouver, Canada from May 30 through June 5, 2004.

President Hayden reported that Frank Wiswall, a vice-president of the CMI, will be stepping down when his current term expires.

Comitè Maritime International (CMI) Working Group on General Average

President Raymond P. Hayden, of New York, reported for Past President Howard M. McCormack, of New York, on activities as MLA delegate to the CMI Working Group on General Average. The cargo side of the International Union of Marine Insurance (IUMI) is seeking to make changes to reduce cargo's responsibility in the event of a General Average loss. Cargo does not want to be responsible for ships not properly maintained, where cargoes are often more valuable than ships. Past President McCormack has posted a very extensive paper on these issues on the MLA website for everyone's review.

COMMITTEE AND STUDY GROUP REPORTS

Amicus Arguments In U.S. Supreme Court

Immediate Past President William R. Dorsey, III, of Baltimore, reported on the Supreme Court's decision in *Sprietsma v. Mercury Marine*. He indicated that the Court's 9 to 0 decision in favor of Plaintiff, and against the engine manufacturer, did not consider any maritime law issues. The Court ruled that although the engine manufacturer asserted that maritime law governed the case, because this argument was not raised below, it was waived. He pointed out that no MLA attorneys were involved in the

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briefings filed in the lower courts. The decision may be reviewed at *Rex R. Sprietsma v. Mercury Marine*, 537 U.S. 51, 123 S.Ct. 518 (2002).

American Bar Association Relations Report

Past President James F. Moseley, of Jacksonville, presented a report on the activities of the American Bar Association and its upcoming General Meeting in San Francisco in August of this year. Of particular interest is House of Delegates Resolution 302 regarding Senate Bill 413 on cases involving asbestosis. The issue is concerning the threshold test for any claim. The resolution supports the proposition that there must be symptomatic conditions before a claim may be filed. Mr. Moseley will report on this further after the August meeting.

Mr. Moseley also reported that marine arbitrators in Florida must be registered in the State. MLA members doing arbitration should check local and state laws regarding arbitration requirements.

Mr. Moseley further reported on the passing of the ABA's Model Code which covers most situations impacting the practice of admiralty law. Mr. Moseley indicated that this is a model code, and has not yet been adopted by any states. Members are encouraged to monitor their state bar activities to see whether or not any of the model rules are adopted.

Fisheries Committee Proposal re Maritime Liens

President Raymond P. Hayden reported on a memo from David Farrell, Jr., Chair of the Committee on Fisheries regarding maritime liens attaching to fishing permits. Recent case law has held that maritime liens may attach to fishing permits and intangible fishing histories. The MLA Fisheries Committee, is concerned that this unduly complicates fishing vessel financing as well as vessel and permit purchase and sales transactions.

The Fisheries Committee has asked the Board of Directors for authorization to submit statements and testimony to Congress on behalf of the Association opposing this case law and that the central registry system statute should be revised.

A general discussion was held about these issues, and President Hayden asked that the Chair of the Fishing Committee and Chair of the Marine Finance Committee make a presentation to the Board before an Association position is taken on these issues.

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Resolution

Upon motion duly made and seconded, the Board passes a resolution thanking Samuel C. Gainsburgh, of New Orleans, and Charles F. Lugenbughl, of New Orleans, for their contributions to the Maritime Law Program at Tulane. The resolution reads:

Be it resolved that the Board of Directors of the Maritime Law Association of the United States expresses its thanks for, and in recognition of, the outstanding contributions of Samuel C. Gainsburgh and Charles F. Lugenbughl to the Maritime Law Program of the Admiralty Law Institute at Tulane, to the practice of maritime law, and The Maritime Law Association

***Ad Hoc* Committee Report on Enhancing MLA Membership and Activities**

Second Vice-President Lizabeth L. Burrell, of New York, Chair of the Special *Ad Hoc* Committee working on enhancing MLA membership and member participation in MLA activities, reported on the status of committee's work to date. Ms. Burrell reported that her committee coordinated membership meetings across the country to survey the membership on how the MLA meets the current needs of the membership in light of the changing maritime industry and related practice of law. While the committee is still gathering and analyzing information, there is a preliminary consensus that economic issues, involving time and cost, and social issues, involving two working spouses, have had a profound impact on many bar and legal institutions, not just the MLA. Because of the importance of this committee's work, President Hayden devoted a large amount of the Board's time to listening and commenting on these preliminary observations. The committee is looking at the nature and extent of meetings both in New York and other venues, greater use of technology, CLE activities, non-lawyer membership, ABA relations, and partnering with other organizations. The MLA, through its committee work, deals with issues that are local, national and international, in character. It was recognized that the MLA provides excellent legal publications, very important committee work, and an excellent opportunity for networking.

During the next few months, the committee will complete its analysis of surveys and member input, and make a formal presentation to the Board of Directors outlining issues and recommendations for the Board's consideration.

PRESIDENTIAL ACTIVITIES

President Raymond P. Hayden, of New York, reported on his activities involving the Tulane Law Review Annual Dinner on March 16, 2003, participation in the Tulane Maritime Law Seminar of March 19 – 21, 2003, and acting as a judge in the John Brown moot court competition to be held in Seattle on April 11 – 12, 2003. He will be making a presentation to AIMU on April 28, 2003, as well as attending the CMI Bordeaux Colloquium in Bordeaux, France from June 10 through 13, 2003. He will also make a presentation at the Seali Meeting in June 2003 in Atlanta, Georgia.

Calendar

- A. AIMU Seminar – Monday, April 28, 2003.
- B. IMO Legal Committee – April/May, 2003.
- C. Annual Spring Dinner – Friday, May 2, 2003.
- D. CLE presentation after General Meeting – Friday, May 2, 2003.
- E. Annual Meeting of the Average Adjuster, London – Thursday, May 8, 2003.
- F. The CMI Colloquium Bordeaux, France – June 10 – 13, 2003.
- G. Fall Meeting of the Association at the Fairmont Southampton Princess Hotel in Bermuda – October 29, 2003 to November 1, 2003.
- H. May 30 – June 5, 2004, CMI Conference, Vancouver, Canada.

President Hayden reported that plans are proceeding for the Fall Meeting of The Association at the Fairmont Southampton Princess in Bermuda. This meeting will have two days of CLE, and has been shortened to three days. Members are reminded that the 2003 Annual Fall Meeting in Bermuda will be on Saturday morning, November 1, 2003, and the Dinner Dance will be Saturday night, November 1, 2003.

Future Officer and Board Meetings

- A. The Officers will meet at the offices of Hill, Rivkins & Hayden in New York on Tuesday, April 29, 2003, at 9:30 a.m.

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- B. Board of Directors meeting at the Association of the Bar of the City of New York Thursday, May 1, 2003 at 9:30 a.m.
- C. Spring Meeting of the Association – Friday, May 2, 2003 at 9:30 a.m.
- D. Summer meeting of the Board of Directors in Seattle, Washington on August 1 and 2, 2003.

There being no further business to come before the Board, the meeting was adjourned at 11:45 a.m.

Respectfully
submitted,

/s/ Warren J.
Marwedel
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
on
May 2, 2003
9:30 a.m.

The meeting was called to order by President Raymond P. Hayden at 9:30 a.m. In addition to President Hayden, the following officers were also present:

Thomas S. Rue, First Vice President
Lizabeth L. Burrell, Second Vice President
Warren J. Marwedel, Secretary
Patrick Bonner, Treasurer
Philip A. Berns, Membership Secretary
William R. Dorsey, III, Immediate Past President

The following Board members were present:

Robert G. Clyne	Mary Elisa Reeves
James Patrick Cooney	James F. Whitehead, III
Robert S. Glenn, Jr.	Robert J. Zapf
Glenn G. Goodier*	JoAnne Zawitoski
Richard M. Leslie	
Armand J. Parè	*Attended by telephone
Alan Van Praag	

At the invitation of President Hayden, Past President James F. Mosley, of Jacksonville; Past President Chester D. Hooper, of New York; Past President Howard M. McCormack, of New York and Robert B. Parrish, of Jacksonville, were also present at the meeting.

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the March 18, 2003, meeting of the Board of Directors and the Secretary's Report were unanimously approved and accepted. The minutes of this meeting and the March 18, 2003, meeting will be published in the Spring 2003 issue of the PROCEEDINGS.

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TREASURER'S REPORT

Treasurer Patrick J. Bonner, of New York, presented the Treasurer's Report for the quarter ending January 28, 2003. He reported on the cash on hand and indicated that dues collections were running about 82%, up slightly from last year. The \$10.00 dues increase reflected an increase of \$15,000.00 in dues billing this year. It is anticipated that a balance of about \$16,000.00 will be in the bank at the end of the year.

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns, of San Francisco, presented eight (8) applicants for proctor membership, twenty-two (22) applicants for associate lawyer membership, three (3) applicants for non-lawyer membership, and one (1) application for re-instatement.

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

James M. Leonard of Huntington, N.Y. (member since 1956)
Edward J. Heine, Jr. of New York, N.Y. (member since 1954)
Richard H. Sommer of Montville, N.J. (member since 1955)
James W. Crabtree of Charlotte, N.C. (member since 1974)
Robert J. Williams of Garden City, N.Y. (member since 1983)
Stephen D. Johnson, Jr. of Metairie, LA (member since 1983)

Mr. Berns reported that the Association had a total membership of 3,149. Of that number, 1,527 are Proctor Members.

Mr. Berns also indicated that the submission date for changes to the membership directory was April 11, 2003, and that changes for officers, directors, chairs and vice-chairs will be May 16, 2003.

Upon motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted, including the list of all successful candidates for membership. A copy of Mr. Berns written report will be appended to the original of these minutes.

INTERNATIONAL ACTIVITIES

COGSA/UNCITRAL Working Group

President Chester D. Hooper, of New York, reported that the MLA Working Group attended the CMI International Subcommittee Meeting in London in February of this year. The UNCITRAL Working Group met at the UN on March 24 through April 4, 2003, to discuss issues of transport law. The text of the draft instrument, dated January 8, 2002, is on the UNCITRAL website at www.uncitral.org. It appears that the European members are agreeable to the door-to-door concept, with certain provisos, and that the Europeans are also more inclined to reach accommodation with American views in an attempt to persuade the Americans to adopt any resulting convention. There will be another meeting in Vienna in October of this year.

As an alternative to the door-to-door carriage under a single carriage document, the draft instrument authorizes parties to agree that it will apply only to the port-to-port part of the carriage with the ocean carrier acting as a freight forwarder for inland carriage. More information may be obtained from the MLA and UNCITRAL websites.

Comité Maritime International (CMI) Colloquium

President Raymond P. Hayden reported that the CMI Colloquium (seminar) will be held in Bordeaux, France from June 11 through the 13. In attendance will be President Hayden, Past President Howard M. McCormack., First Vice-President Thomas S. Rue, Second Vice-President Lizabeth L. Burrell and George Chandler of the Committee on Electronic Communication and Commerce.

The subject matter to be discussed will include questions on electronic trade, transport documents, general average, issues of transport law and other areas of international law including place of refuge and marine insurance. Information concerning the CMI Colloquium may be obtained from the CMI website at www.comitemaritime.org.

There will be a formal CMI plenary session in Vancouver, Canada from May 30 through June 5, 2004. Information may be obtained from the CMI website at www.cmi2004.org.

Past President Howard M. McCormack, of New York, reported on the CMI Working Group on General Average. Mr. McCormack is the only

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American on the CMI Working Group on General Average. He reported that the cargo side of the International Union Of Marine Insurance (IUMI) is seeking to make changes to reduce cargo's responsibility in the event of a general average loss. Cargo argues that it does not want to be responsible for ships not properly maintained, where cargoes are often more valuable than the ships that carry it. Mr. McCormack has posted a very extensive paper on these issues on the MLA website.

International Maritime Organizations (IMO)

Immediate Past President William R. Dorsey, III, of Baltimore reported on the activities of the IMO Legal Committee. At the fall meeting held in London last October, the committee finalized the amendments to the Athens Convention. The legal committee was also meeting in London this week addressing issues of Place of Refuge, Wreck Removal, the Suppression of Unlawful Acts against the Safety of Marine Transportation to Combat Terrorism (SUA) and Provisions of Financial Security regarding seafarers rights. Mr. Dorsey said the U.S. Government is not certain which federal agency will take the lead in any attempt to adopt the Protocol to the Athens Convention. It is believed that, at some point, the U.S. will try to adopt the Protocol. In the past, the MLA has expressed opposition to the Protocol and will have to give its opinion again should the U.S. try to adopt it. There will be another meeting of the IMO Legal Committee in London on October 13, 2003.

COMMITTEE AND STUDY GROUP REPORTS

American Bar Association Relations Report

Past President James F. Moseley, of Jacksonville, the MLA's delegate to the ABA House of Delegates, reported on the activities of the ABA and its upcoming meeting in San Francisco in August of this year. Of particular interest was the House of Delegates Resolution 302 regarding Senate Bill 413 on cases involving asbestosis and the issue concerning a threshold test for any claim.

Mr. Moseley also reported on the passing of the ABA's New Model Code and recommends that members monitor their state bar associations to see if any of the new provisions have been adopted.

Mr. Moseley also reported on the status of the ABA's contemplated review of the Foreign Sovereign Immunities Act, and the possible review of

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uniformity proposals for marine insurance. Mr. Moseley will make a further report after the August ABA meeting.

Fisheries Committee re Maritime Liens

President Hayden reported that the Fishing Committee and Marine Finance Committee will study the issue raised in David Farrell, Jr.'s memo regarding maritime liens attaching to fishing permits and report further on these issues.

***Ad Hoc* Committee on Enhancing MLA Membership and Activities**

Second Vice-President Lizabeth L. Burrell, of New York, chair of the special *ad hoc* committee working on enhancing MLA membership and member participation in MLA activities gave a preliminary report on the status of the committee's work to date. She indicated that the committee had certain guiding principles and goals designed to maintain the character of the Association; including education, written materials, committee work, networking; while responding to the changes in the practice of maritime law including economic and social issues. Ms. Burrell reported the committee is still organizing the information gathered, and expects to present a report to the Board of Directors, for its consideration, at the next meeting this summer. This report is expected to contain observations and recommendations involving the structure and location of meetings, modifications to printed and electronic dissemination of MLA materials, as well as trying to address the economic and social issues of member participation.

President Hayden expressed his thanks for the committee's hard work and indicated the importance of this type of analysis. Various members of the Board reported that other organizations are going through similar self-examinations, to make sure they keep up with the times and remain relevant to the varied interests of their memberships.

As part of this process, President Hayden asked First Vice-President Thomas S. Rue of Mobile to form a small committee to make a recommendation for the Fall 2004 meeting.

Resolution – John W. Sims

The Board passed a resolution recognizing Former President John W. Sims of New Orleans for his contributions to the MLA, as a lawyer and as a person.

Retiring Board Members

President Raymond P. Hayden thanked retiring Board Members, James K. Carroll, of New Orleans, Mary Elisa Reeves of Philadelphia, Alan Van Praag of New York and James F. Whitehead, III of Seattle for their hard work and contribution to the work of the Board of Directors.

August Board of Directors Meeting

Retiring Director James Whitehead, III of Seattle, reported that the August meeting of the Board of Directors will be held in Seattle on August 1 and 2, 2003. The local MLA membership will provide a CLE presentation on the practice of maritime law in the Northwest.

FALL MEETING – 2003

Robert B. Parrish, of Jacksonville, Chair of the Bermuda Arrangements Committee reported on plans for the Fall meeting at the Fairmount Southampton Princess Hotel. Mr. Parrish reported that the committee is still working on various aspects of the meeting including a reception to be held off hotel property. There will be sports activities on Wednesday, October 29, 2003, with the President's Reception later that evening. Seminars will be held on October 30 and 31, 2003, with the General Meeting being held on Saturday morning, November 1, 2003, and the Dinner Dance on Saturday evening. Mr. Parrish indicated the Dinner Dance will be Bermuda Formal, which will be described in greater detail in the fall meeting materials. Members will not have to bring their tuxedos.

Committee Chairs

President Raymond P. Hayden reported the following changes in committee chairs:

Committee Name:	Carrier Security
Incoming Chair:	Bruce G. Paulsen
Outgoing Chair:	Gordon D. Schreck
Committee Name:	Classification Society
Incoming Chair:	Robert G. Clyne
Outgoing Chair:	Richard H. Brown, Jr.
Committee Name:	Comité Maritime International
Incoming Chair:	Christopher S. Davis
Outgoing Chair:	Michael Marks Cohen

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Committee Name:	Electronic Communication and Commerce
Incoming Chair:	John Paul Jones
Outgoing Chair:	Glen T. Oxton
Committee Name:	International Law of the Sea
Incoming Chair:	Lawrence B. Brennan
Outgoing Chair:	Dr. Samuel P. Menefee
Committee Name:	Young Lawyers
Incoming Chair:	Lawrence J. Kahn
Outgoing Chair:	Joshua S. Force
Committee Name:	River and Towing
Incoming Chair:	Beauregard Gelpi
Outgoing Chair:	F. William Mahley

PRESIDENTIAL ACTIVITIES

President Raymond P. Hayden, of New York, reported on his activities involving the Tulane Maritime Law Seminar on March 19-21, 2003, in New Orleans; the John Brown Moot Court Competition in Seattle on April 11-12, 2003; and the AIMU Seminar presentation on April 28, 2003.

Calendar

- A. Annual Meeting of Average Adjusters, London – May 8, 2003.
- B. The CMI Colloquium Bordeaux, France – June 10 – 13, 2003.
- C. Fall Meeting of the Association at the Fairmont Southampton Princess Hotel in Bermuda – October 29, 2003 to November 1, 2003.
- D. CMI Conference in Vancouver, Canada – May 30 – June 5, 2004.

Future Officer and Board Meetings

- A. The Officers will meet in Seattle, WA on August 1, 2003.
- B. The Board of Directors will meet in Seattle, WA on August 2, 2003.

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- C. The Officers will meet in Bermuda on Wednesday, August 29, 2003.
- D. The Board of Directors will meet in Bermuda on Thursday, October 30, 2003.

There being no further business to come before the Board, the meeting was adjourned at 12:10 p.m.

Respectfully
submitted,

/s/ Warren J.
Marwedel
Secretary