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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING—MAY 6, 2005

PRESENT:
THOMAS S. RUE
LIZABETH L. BURRELL
WARREN J. MARWEDEL
JAMES W. BARTLETT, III
PATRICK J. BONNER
PHILIP A. BERNS

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Dennis Minichello
Michael T. Moore
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John M. Ryan
Michael J. Ryan
David M. Salentine
John C. Scalia
John P. Schaffer
Charles E. Schmidt
Christina K. Schovajsa
Gordon D. Schreck
Janis G. Schulmeisters
Professor David J. Sharpe
Stephen J. Sheinbaum
David F. Sipple
Steven L. Snell
Michael A. Snyder
Stuart P. Sperling
Graydon S. Staring
Gordon C. Starling, Jr.
Michael F. Sturley
Norman C. Sullivan, Jr.
Michael L. Swain
John H. Sweeney
William K. Terrill, II
Professor William Tetley
R. Michael Underhill
Michael E. Unger
Alan Van Praag
David N. Ventker
Kenneth H. Volk
Arthur J. Volkle, Jr.
Thomas J. Wagner
Kevin P. Walters
Harold K. Watson
James F. Whitehead
M. Hamilton Whitman, Jr.
David M. Williams
Andrew C. Wilson
Frank L. Wiswall, Jr.
John M. Woods
Thomas M. Wynne
Christopher M. Young
Robert J. Zapf
Ahmed Zarnegar
JoAnne Zawitoski

And the following 9 guests:

Robin Becker
Nigel Frawley
John Fulwater
Robert Haugh
Terence Kenneally
Kevin L. McGee
Douglas Petko
Johan Sidklev
Scott Wagner

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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING
NEW YORK CITY, NEW YORK
MAY 6, 2005

PROCEEDINGS

PRESIDENT RUE: Good morning, ladies and gentlemen. Welcome to the Spring Meeting of 2005 in New York City. Thank you all for coming.

Let me issue a general reminder to please either turn your cell phone off or put it on the silent mode. We wish you to keep your communications secret.

I want to recognize several special guests who are with us this morning: David Martowski, who is President of the Society of Maritime Arbitrators. David, it's good to have you with us.

MR. MARTOWSKI: Thank you.

MR. RUE: From the far reaches of Canada, Professor Bill Tetley. Jim Craig, President of AIMU. Nigel Frawley, who is Secretary to the Canadian Maritime Law Association, and, not having enough to do with that unpaid position, is now the Secretary General of the CMI. Congratulations.

I would also like to introduce Doug Petko and Robin Becker, who are employed by PC Solutions. These are the individuals who keep our papers and administrative matters, as well as our website, in order. And so it would greatly facilitate their jobs if you as Committee Chairs will keep them apprised of who joins your Committee. They will have no way to know unless you tell them, until our website upgrade is complete. In that connection, we expect that or at least we have been told that will be done by mid-June. But my experience of 20 years with computers is that it probably will take a little longer than that.

I would also like to recognize several, as a group, Past Presidents of the Maritime Law Association, but I want to recognize by name David Owen from Baltimore. David, good to see you.

I know Peter Cullen is in town. I haven't seen him walk in. Peter, are you here? Nigel, you'll have to stand in for both of you.

Is Captain Baumgartner of the Coast Guard here? Perhaps he will drift in a little bit later.

I want to recognize three Chairs who are retiring, and I ask them to come up and receive their certificates: David Farrell of Fisheries; John Ryan of Stevedore, Marine Terminals and Shoreside Services; and Fred Kuffler of Environment Crimes. If you are here, would you please come up?

I am also reliably informed that we have four retiring Board members. I would like to recognize them and ask them to come up. That is Bob Clyne of New York, Bobby Glenn of Savannah, Glenn Goodier of New Orleans, and Dick Leslie of Miami.

You know as a volunteer organization that the bulk of our work is conducted through Committees, and that work is organized and orchestrated through the Committee Chairs, and these guys have done a terrific job, as have the four retiring Directors. This is very important to the work of the Association, and without their dedication and attendance at meetings and organizing and orchestrating matters, we would be stuck in the mud.

I now call upon Mr. Bartlett to give the Secretary's report.

MR. BARTLETT: Thank you, Mr. President.

Before I start, I would like to remind everyone to sign the sign-in sheets out in the hall before you leave so your attendance can be recorded. And to the speakers, please give the court reporter your card before you begin to speak.

The Board of Directors met twice since our last meeting. We met on March 15th in New Orleans at Jones Walker and yesterday here at the Association of the Bar of the City of New York. I will briefly review some of the matters that we discussed, and others will be covered, I think, by the reports of various Chairs of the Committees.

The Title 46 codification was not enacted last year by the 108th Congress, and hopefully it will be enacted in the 109th Congress. Dennis Bryant has been heading up the *Ad Hoc* Committee relating to that and has submitted the input of the Association. We believe that that codification will be enacted this year.

President Rue and First Vice-President Burrell attended the CMI meeting last month in Paris. At that meeting, Frank L. Wiswall of this Association

retired as Vice-President, and Stewart Heatherington was elected in his place as Vice-President. Christopher O. Davis of New Orleans was elected as a Councilor on the Executive Council of the CMI.

On Monday a meeting will be held of a U.S. State Department Advisory Committee in Washington relating to the Hague Convention on the enforceability of forum selection clauses in commercial contracts. Alan Van Praag of this Association will represent the Association at that meeting in Washington.

As President Rue mentioned, the MLA website is currently undergoing an upgrade, and we hope that will be completed within the next two months or so.

As you will also hear in detail later in this meeting, the Fall 2005 Meeting of the Association will be held at the Fairmont Scottsdale Princess Hotel in Scottsdale, Arizona, November 2 to November 5, 2005. Marion McDaniel, the Chair of the Arrangements Committee for that meeting, will be reporting later in the day.

The Board addressed the question of holding the Fall 2006 Meeting at a location other than New York. As you all know, the Fall Meeting last year was held in New Orleans, and it was a huge success. Specifically, the Board addressed whether we wanted to hold the meeting in San Francisco.

A Committee has been named to start to plan or look into the planning of that, with Forrest Booth as its Chair. At our meeting yesterday, John Edginton, who is also a member of the Committee, reported on tentative negotiations with hotels and the discussions that they had relating to the arrangements.

The proposal is to hold the MLA Meeting in conjunction with the Pacific Admiralty Seminar in San Francisco. The dates would be a little bit earlier than our meetings usually are held, but that is for two reasons. One, to coordinate with the Pacific Admiralty Seminar; and, two, to hold it in conjunction as well with the Fleet Week in San Francisco. The tentative dates are October 4 to 7, 2006. The Board approved the Committee going forward with the planning for that meeting.

The Board addressed a proposal on ocean policy that has been raised by the ABA Standing Committee on Environmental Law. This came to our attention through the TIPS Section of the ABA. After preliminary study, it was felt that several Committees of the MLA need to review the proposal

and to have their input. The Board adopted a resolution that will be presented to the ABA Standing Committee on Environmental Law to delay taking any action on the proposal on ocean policy until the MLA Committees can give the ABA their input. That will be transmitted to the ABA by President Rue.

The Board also approved the formation of Board Subcommittees to direct their attention to aspects of the Association that are thought to be particularly important to focus on. Those three new Subcommittees of the Board are the Membership Subcommittee, the Finances Subcommittee, and the Committees Subcommittee.

President Rue has been very active in the past months and will be in the future months in visiting and attending various meetings. On March 10, 2005, he attended the American Club luncheon. On March 16 to 18, President Rue and the Board attended the Tulane Admiralty Law Institute in New Orleans. President Rue and First Vice-President Burrell attended the Comité Maritime International meeting in Paris on April 16th. President Rue attended the International Maritime Organization meeting in London on April 25th to 29th.

President Rue will be attending the Average Adjusters meeting in London on May 12th, and he will be attending the SEALI seminar on June 24th.

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

MR. RUE: Thank you. Do I get a second? All in favor, please say aye. Opposed no. Motion carried.

Mr. Bonner, the Treasurer's report, please.

MR. BONNER: Thank you, Mr. President.

Members and guests, currently we have about $326,000 in the treasury, which is about $39,000 more than we had last year at this time.

There are a number of reasons for our sound financial health. We're the only group in the United States whose administrative costs have gone down due to the use of computers and computerized records. However, we're working to change that – and we're going to be redoing the web page to make it more interactive. So I'm sure that will cost more. We are hiring consultants, and you know what happens, it will cost more.

A second factor why we are financially healthy is the overwhelming success of the New Orleans meeting. I met with Marshall Keating last week, and we are setting up a cold case squad consisting of Dwight LeBlanc and Glenn Goodier, and they are going to be looking over all our old dues records. So, if you know anybody who owes dues prior to 1985, tell them to watch out for Dwight and Glenn.

As Tom mentioned, Robin Becker is outside, and if your email address is not in the Directory, please talk to Robin, give her your email address. When you call up the MLA at our phone number, which is 1-800-MLA-LIST, Robin is the one who answers. So please introduce yourself to her.

And also, we have reduced our printing costs considerably. We are looking to reduce them further. So if you would like to get any of the MLA publications on-line, please let us know. We will send them to you on-line and we won't send them to you by mail.

My final point is as part of our disclosure requirements under the Sarbanes-Oxley Act, I have to disclose that we are moving a substantial portion of the Association's assets from Treasury instruments into Bally stock. We have reliable information that a certain high roller is moving from San Francisco to Nevada, and we wanted to position the Association to take advantage of this golden opportunity. Just so the reporter gets it right, it is Bally stock, not Bailystock, as in Bailystock and Bloom.

That concludes my report, and I move its adoption.

MR. RUE: Thank you, Mr. Bonner.

I will conclude that that hand of applause was approval of your report, and it is so adopted.

I will take this occasion to let you know that when the website upgrade is complete, there will be chat rooms for Committees to discuss and set forth their positions on various matters, and you will be able to actually take a vote by computer. You will be able to change your Committee membership by computer. You do have a limit of three, and it will only allow you to join three, but you can move and shake as you see fit. You will not have to call upon the President to change Committees anymore. And we hope that facilitates your activities with the Association.

I see that Peter Cullen has joined us. Peter, it is great to have you.

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

MR. BERNS: Well, I think that Bally stock may do it.

I apologize about the invitation for Enron a few years back. Some things just don't work out.

On March 15th the Board met, and we admitted 15 new Associates, reinstated an Associate member, and we had elected two Judicial members whom I will name. At that time, as of March 15th, our membership totaled 3,135.

On April 25th, Robin reported to me that our numbers were 3,106. That was due to certain other changes, including resignations. Pat Bonner is encouraging dismembering the nonpaying dues members. And some changes in Judicial membership. One was Daniel Knowles, III, had become a judge. His membership status was changed to Judicial. And we also elected District Judge Robert S. Lasnik of the Western District of Washington, and District Judge Robert A. Jackson of the Eastern District of Virginia as Judicial members.

We have as of this meeting, at the Board meeting on May 5, 2005, nine Associate members who were approved for Proctor status. They are Dennis L. Bryant, Jana N. Byron, Robert E. Collins, John V. Coulter, Michael D. Formby, Donald J. Freeman, J. Patrick Geraghty, Pamela L. Milgrim, and Charlotte Valentin.

At the same meeting, sixteen new members as Associates were elected. I will not name them. I will send out notices. And if it is in my usual expeditious matter, it should be done within about a month. That's if everything goes right.

Non-lawyer members, we have elected four new members, if I can find the insert. Christopher Miley, Claims Manager of AIG Oil Rig; Captain John C. Timmel, President and CEO of Starboard Ten, Inc., Maritime Expert Witness Services; Charles T. Rekerdres—my apologies if I pronounce that wrong—President of Rekerdres and Sons Insurance Agency; and Brooke Y. Grehan.

There were no applications for reinstatement.

We have a new Judicial member, and that is the Honorable Paul V. Niemeyer, who, you will know if you attended last night, gave an excellent

lecture at the Nick Healy Lecture Series. Judge Niemeyer is a United States Circuit Judge, United States Court of Appeals for the Fourth Circuit.

Academic member—and if you attend the CLE credits this afternoon, he will be here—Jonathan M. Gutoff of Roger Williams University School of Law, and he was elected as an Academic member.

We also voted and approved a new Ex-Officio member status for the General Counsel of NOAA. As you know, NOAA is very involved in a lot of things that we are interested in. Present ones are treasure salvage—they have an interest in that—plus pollution, marine mammals protection, sanctuaries. The present General Counsel is James R. Walpole.

For those of you who are not familiar, the person who holds the position in that Ex-Officio membership is a Ex-Officio member during his term. When he leaves he is no longer a member, and whoever replaces him becomes a member.

At the March 15, 2005 Board meeting I reported as receiving notice of the following deaths: Alexander E. Rugani of New York; John S. Osborne of New York; John J. Martin of Merrick, New York; and a late notice has been received of Gordon L. Poole of San Francisco.

I regret to now have to report I received a notice of death of the following members: Ralph E. McKay of Forked River, New Jersey; Felix Salgado, Jr., of New York; E.V. "Gus" Greenwood of Houston, Texas; the Honorable J. Calvitt Clarke, Jr., of Norfolk; and Wayne F. Emard of San Francisco; and a nonmember, but a former member, who everyone seems to have known, Joe Carone of New York. And, regretfully, Suzanne Hayden, the wife of former President Ray Hayden. Mr. President, may I ask that we have a moment of silence.

MR. RUE: Ladies and gentlemen, please stand for a moment of silence.

MR. BERNS: The Directory, you should have all received it by now, but I will again point out that the Directory is obsolete the day we send it to the printer, because we continually get upgrades, changes, and they are put on the website within a week or two weeks.

Your best bet, if you are looking for information, is to go to the website first. There was a delay in mailing out the directory. One reason was because we were involved in setting up New Orleans, which took a lot of

work; the changes in the Committees; and also we were trying to mix a mailing with some other materials to save money so we could invest in Bally. I'll say, I should iterate it, but I have said it so many times, I guess it's more "reiterate": Use the website. That's your best bet.

With the approval of the Board of nine members being elevated to Proctor status, the admission of sixteen Associates, the addition of one Judicial member, one Academic member, and one *Ex-Officio* member, all as I presented before, the membership will consist of *Ex-Officio*, 13 categories; Honorary, 3; Judicial, 144; Academic, 59; Proctors 1,490; Associates, 1,221; Non-lawyers, 198; for a total of 3,128 members.

Now, as I've emphasized over and over, we are still looking for new members, not for numbers, but for activity. If any of you have anyone you wish to recommend that you feel would be active in the Association, please make that recommendation. I am getting these recommendations. We seem to be doing well in getting new members, considering the state of our economy in admiralty law.

I also have been pushing that for those of you who are Associates and eligible—and, remember, we need activity, and activity means that you should be able and eligible to be a Chair. To be a Chair, to do certain things you have to be a Proctor member. So please submit the materials.

I also recommend and request earnestly, deeply, two things: When you send in your request to become a Proctor, please spell your name right. Secondly, even if I spell mine wrong, try to spell mine right. It impresses in me a certain way.

And with that, Mr. President, that constitutes my report and I move its acceptance.

MR. RUE: Do I hear a second? All in favor please say aye. Any opposed? None. Motion carried.

I've been asked to let you know that on July 9, 2005, in San Francisco there will be a retirement party and roast of Phil Berns, who will be retiring from the federal government after more years than he can remember.

MR. BERNS: Remember what?

MR. RUE: I'm reliably told that it is 47.

Everybody here knows Phil. Everybody has had a conversation with Phil. Everybody has either had their arm twisted, their ear bent or something else done to them by Phil Berns.

MR. BERNS: Would you like to reword that?

MR. RUE: No. I think I stated it accurately.

This is not a chance to get even. This is just a chance to let him know how you feel about him in his retirement. So don't miss this. There is a sheet at the back. Contact Mike Underhill if you have an interest in attending this roast. Forget the retirement. This is going to be a roast.

MR. BERNS: It's going to be running for about three weeks.

MR. RUE: Liz Burrell will report on the Special Committee.

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

You have been hearing reports from this Committee over the past two years or so and heard a lot about our recommendations.

You may recall that at the beginning of this effort we made a list of topics and urged members to examine virtually all of the functions and activities, and even the life and spirit, perhaps, of this Association.

We are bringing our activities to a close. We have only, in terms of forthcoming work, two more reports; one which will summarize our recommendations and the actions that the Board has taken on them, which have been incredibly favorable. And we will also be issuing a more detailed report comparing the data and analyzing the raw data over many, many years that has been at the foundation of some of our recommendations.

For all of this, I have to thank every member of the Association who has written in and answered a questionnaire, attended a meeting, expressed views in the hallway, because all of these have been taken into account in trying to address this Association's—vitality to keep it in the spirit that it has functioned for so many successful years.

The last area that we examined was the role of the Board. Board members had felt somewhat underutilized, and many members didn't know who the Board members were, or exactly what they were doing, which is a tremen-

dous waste of the talented people who serve as our Directors. Among the things that the Special Committee recommended were that the Board become more active in linking the Committees to the Association's central "management", so to speak; making sure that Committee Chairs both receive all the support that they deserve to get their projects done, and also that the Committees were overall considering the general policies of the Association, making a real bridge there through the Board. As you also heard this morning, so far the Board members have now been assigned to Board Subcommittees in areas of importance to the continuing functioning of the Association.

With that said, I think that we were hearing this morning about many recommended changes: all of these things about the meeting in New Orleans, the San Francisco meeting, the web page, the changes in the Board. We sit here in a room that we have met in for how many years. We sit here with familiar faces. We are hearing reports. We know the Committees, and we know they are doing fine work. We have all of these traditions all around us, yet we are hardly static.

Listen to how the Committee's work in two years has been integrated into everything that this Association does. It is really quite remarkable.

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

MR. RUE: Well, we owe a deep debt of gratitude to Liz and her Committee. And I ask her if she could name the people on her Committee, because I can't, because I think they deserve recognition, too. I'm going to give her a minute to do that.

MS. BURRELL: Let me make sure I have everybody.

MR. RUE: In the meantime, I want to bring to your attention first the presence of our beloved Nick Healy. Last evening there was the Seventh Healy Lecture, and at that lecture you were able to pick up a bound volume of the six former lectures. There are copies here in the hall, and if you did not receive one last night, you are invited to take one. They are free of charge, beautifully bound, certainly a keepsake, and certainly a tribute to one of America's great maritime lawyers, Nick Healy.

MR. RUE: Liz, are you ready?

MS. BURRELL: Yes, I am. I just wanted to make sure that I hadn't inadvertently omitted anyone, because this work was so much a Committee

project. This was hardly the work of any individual. Everybody contributed in such magnificent and creative and hard working ways. The members are, in no particular order, just around in a circle, almost: Brett Lebreton, Pat Bonner, Donny Radcliff, JoAnne Zawitoski, Ray Massey, Doug Muller, Bruce King, Jim Whitehead, and Forrest Booth. They are each to be congratulated on their heavy duty work on this.

MR. RUE: If you are here, would you please stand up?

Let's give them a round of applause.

We will be moving to our Standing Committee reports. We will call one up and have one on deck. Please remember to give your business card to the court reporter so we can accurately report who said what.

Before we move to that, first up will be Jay Paré for Arbitration and ADR, followed by Don Greenman of Carriage of Goods.

Let me just say that we are continuing to make minor adjustments in the new Committee structure. If you have any suggestions as to how we might further refine the reconstitution of the Committees, those suggestions will be most welcome. Jay.

MR. PARÉ: Thank you, Mr. President.

The Arbitration and ADR Committee has met six times since last spring.

The principal item of our agenda has been working on a model mediation agreement. We have had the benefit of the views of the Association members from all over the country. At our meeting on Wednesday, we concluded that draft model mediation agreement, and Bob Clyne, our liaison Board member, has submitted that to the Board.

Our view is that we would like to have that posted on the Association website. We look forward to what we can do for the Association to improve that or help to post that, whatever is required at this point. That also includes some frequently asked questions concerning the issue of mediation. And we hope those will be helpful, as well.

At our meeting on Wednesday we also had Don Kennedy give a report on UNCITRAL arbitration updates. UNCITRAL is now in the process of developing an amendment to arbitration laws that would provide for the

arbitrators to award security when that is not provided for by the laws of the country where the arbitration is taking place.

And coincidentally, we have just found out about a bill in the New York State Senate to amend the New York state law to permit an attachment or an injunction in aid of an arbitration abroad. And we would recommend that that also be something that the Association support in connection with the Committees of the City Bar Association.

And that constitutes my report, Mr. President.

MR. RUE: Thank you.

Don Greenman, to be followed by Michael Unger.

MR. GREENMAN: Thank you, Mr. President, members, guests.

Our Committee met on Wednesday. We heard that Michael Ryan, who is Chair of the Subcommittee on Cargo Liability, is interested in moving forward the study in his area that has been slightly dormant. Cargo liability does not mean liability of ships to cargo. It means the liability of cargo to other people. There have been a couple of cases lately that Michael brought to our attention, one in which the shipper of alfalfa was found to be liable for a disaster. Another one for activated carbon. If anyone knows of situations that involve that type of liability, Michael would be interested to hear about it, because there is concern as to what the liabilities are and whether they might be insured, or whether people just worry about them or don't worry about them as uninsured liabilities.

We had a nice presentation by Professor Tetley on Canada's version of the anti-*SKY REEFER* law, which has been in effect, I believe, for about four years now. There have been five cases that he discussed.

Most recently there was a case called *Ford Aquitaine v. CANMAR PRIDE,* which was decided by the Federal Court in Canada on March 31st. Ford had a shipping contract with a carrier that called for jurisdiction in Michigan, of all places, which seemed to be their home port. The cargo, though, was discharged in Canada. Under the Canadian law, which is the Maritime Liability Act, Section 46(1), notwithstanding the mandatory jurisdiction clause for Michigan, suit could be filed in Canada. Ford thought that Canada was more likely to give them Hague-Visby limits than the court in the U.S., even though COGSA didn't apply because the cargo never touched the United States.

Ford, then, in Michigan filed a motion to dismiss its own action on *forum non conveniens* and lost. And then the carrier filed a motion to stay the action in Canada, even though the Canadian statute gave the Canadian court jurisdiction. The Court in Canada then looked at *forum non conveniens* principles and said it was going to stay its case in favor of the U.S. jurisdiction. This case will in due course appear in the American Maritime Cases, but it is an interesting analysis of what may happen if one gets involved in an anti-*SKY REEFER* case. In this particular case, the jurisdiction that was created for Canada didn't prevail.

We had a very informative CLE presentation by Professor Sweeney, who advised us on the birth of the Hamburg Rules, with some anecdotes about certain delegates who had some escapades on the Reeperbahn in Hamburg.

We had a report about the activities of the Working Group from UNCITRAL, which is proceeding along to a conclusion within the next couple of years. We are getting the impression that it's going to be necessary to do a little education of this Association as to what is going to be the final version. The final version is a little bit far off at the moment, but for people who may think that the document is based on our prior MLA amendments and codification, that is not right. So it will be necessary for people to start looking into what is going to come to pass. Jurisdiction is a very hot issue that was just discussed at the last Working Group. If Michael Sturley is here somewhere, I think he will give us a report on the most recent Working Group session that just ended a week and-a-half ago. Michael.

MR. STURLEY: Thank you, Don, Mr. President, fellow members.

First of all, Mary Helen Carlson, the head of the U.S. delegation to UNCITRAL Working Group III, has asked me to convey her warm greetings to the Association and her thanks to the Association and its members for all of the help that has been provided in conjunction with this negotiation.

Picking up on a point that Don just made, our current goal in the Working Group is to complete the third reading of the instrument at our Vienna meeting in the fall of 2006—so the fall of next year. We then go to the U.N. General Assembly on that schedule in October of 2007. So we still have a little time, but the end is in sight.

The Working Group met most of last week and all of the week before, from April 18th to the 28th. There were three major topics on the agenda

for this meeting. The first was scope of application and freedom of contract; second was jurisdiction and arbitration; and third was the electronic commerce aspects of the instrument. Since we have only an hour and a half left, I'm just going to be able to hit the highlights here.

Scope of application was discussed in great detail in an article in the current issue of the Journal of International Maritime Law, so those of you who really want the details can look there.

The most significant issue on that topic from our perspective is how to preserve the charter party exclusion. This is an issue that has been pressed by our own Arbitration Committee and its Chair. And if you followed that discussion, you would no doubt see his influence in the resolution of the charter party exclusion issue.

The freedom of contract discussion focused on the concerns that have been pressed by the U.S. industry in an effort to achieve greater flexibility under service contracts. It appears that the U.S. industry is going to end up with a provision that it can live with, which will give it some flexibility there.

As Don just suggested, jurisdiction has been a very hot topic. Unfortunately, it still remains a bit up in the air.

The European Commission has asserted its exclusive authority to negotiate on this topic on behalf of all 25 of the European Union members. Unfortunately, the European Commission hasn't quite worked out what its position is going to be, so we're not sure exactly where those negotiations will lead. The Europeans will be meeting in June to try to work out their internal position.

My prediction is that in the end the instrument will include a Hamburg-type list of available forums from which the cargo claimant will be allowed to choose. I think the big issue there is whether or not ports will be included. Certainly the place of receipt and the place of delivery will be included in the list. But in a multi-modal shipment, the port of loading and the port of discharge are not necessarily the place of receipt or the place of delivery.

Another big question is whether or not exclusive jurisdiction clauses will be enforceable under service contracts, for which the U.S. industry is pushing quite hard.

Arbitration is even more up in the air. There's a wide range of views on arbitration. But we anticipate that the Dutch delegation will be circulating a new compromise proposal later this month. No details are available yet. But broadly speaking, the idea is that arbitration clauses will be enforceable in tramp trades but prohibited in liner trades. We'll certainly look closely at this compromise proposal when it comes out.

The e-commerce discussion was very technical. The main issue there was how the instrument will equally accommodate any type of electronic system; in other words, how it will allow both a registry system and a token system. But luckily for you, I will not go into any further detail on that issue.

More details will be available in written reports, including the official report of this session, which will be available on the UNCITRAL website as soon as it is translated into all six of the official UN languages.

That concludes my report. Thank you.

MR. RUE: Thank you, Michael and thank you, Don.

Michael, I don't want to touch off any international incidents, but it seems to me that if the European Union is going to have 25 votes on these types of matters, that the U.S. ought to have 50.

Michael Unger for Cruise Lines, to be followed by Dave Farrell for Fisheries.

MR. UNGER: Good morning, Mr. President, fellow members.

The Cruise Lines and Passenger Ships Committee met yesterday at the offices of Freehill Hogan & Mahar. We had approximately 30 members in attendance.

We discussed a number of recent significant cases, including the *Bautista v. Norwegian Caribbean* case, in which the 11th Circuit upheld the POEA foreign selection clause in sending the crew members who were victims on the NORWAY tragedy to resolve their cases in the Philippines.

The 11th Circuit was also the subject of a decision involving a sexual assault involving a crew member who assaulted a passenger ashore. The 11th Circuit found that because the crew member had begun a relationship with the passenger aboard the vessel, the fact that the sexual assault took

place ashore was not a ground to dismiss the passenger's action against the cruise line, which was found strictly liable for the crew member's actions.

The other issues we discussed included the *Spector* case, which is awaiting a decision from the Supreme Court. The case involves the issue of whether the ADA applies to foreign flag cruise ships.

And finally we discussed the current state of the Athens Convention, which is yet to be ratified. There are only six signatories at this point in time, although the European Union is encouraging all member states to ratify the convention by the end of the summer.

Thank you very much.

MR. RUE: Thank you, Dave.

Dave Farrell of Fisheries, to be followed by Beau Gelpi of Inland River Practice.

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

The Fisheries Committee met yesterday at DeOrchis & Partners.

We had an outside speaker, a lobbyist, Justin Le Blanc, who shared his views on fisheries policy inside the Beltway. This was a timely topic, as we also had a report from our Vice-Chair, Steve Johnson, regarding the meetings he had earlier this week with Senator Stafford on the resolutions passed by the MLA in New Orleans last fall calling for an amendment eliminating maritime liens on fish permits and housekeeping revisions to the American Fisheries Act. We also spent quite a bit of time looking at the American Bar Association resolution supporting the Pew Oceans Commission and U.S. Ocean Commission on Ocean Policy reports, which Secretary Bartlett mentioned earlier. The U.S. fishing industry uniquely interfaces with traditional maritime commerce, with the emerging field of ocean ecology, and with coastal culture and socioeconomic issues. As such, fishing is often on the front lines of efforts to reform ocean policy. An example would be the 1976 Magnuson Fishery Conservation and Management Act, which established the 200-mile limit and exclusive economic zone.

The ABA and these other groups are advocating a substantial change to fishery regulations, calling for ecosystem management, which is a code word for pure science. Now, there is a lot to be said for that, because in

the past 30 years science hasn't always figured into fishery regulations. It's been very politicized. But we need to be vigilant as efforts go forward to prevent the commercial extinction of fish stocks that we don't also cause the extinction of commercial fishing. Therefore, the Fisheries Committee has put together a study group to look at this ABA resolution and provide written comments, which we plan on submitting in the next several weeks.

Finally, it's been an honor to serve as Chair, and I would like to thank my predecessor, Bill Birkhead, and successor, Steve Johnson, for their great support throughout. Thank you.

MR. RUE: Beau Gelpi for Inland River Practice, to be followed by Chris Davis for International Organizations, Conventions and Standards.

MR. GELPI: Thank you, Mr. President, members of the Association and guests.

The Inland River Committee met at McAllister Towing's office on Wednesday morning. I would like to thank McAllister for their continued support of our Committee. The meeting was well attended by Committee members and nonmembers from all three coasts and several inland river cities.

Discussions mostly centered on regulations being drafted by the Coast Guard. As many of you know, the Coast Guard has now taken over inspection of formerly uninspected towing vessels. The regulations are in the drafting stage. A Coast Guard representative advised us that they include only the towing vessel and not the towed vessel or the barge. Since the majority of work actually takes place on the barge, we're going to see if we can get them to include the barge, to keep OSHA regulations from applying on the barge. That seems to be what the industry wants.

We also discussed an amendment to the definition of covered vessel under the Oil Pollution Act. It has been recently amended to include vessels under 400 gross international tons. Many of the smaller towboats on the rivers were not constructed with any particular care as to what the international tonnage would be, but rather the U.S. tonnage. So this new regulation apparently sweeps several classes of towing vessels into the category that requires them to have a contingency plan on file with an oil spill response contractor, which can be available within a short period of time. We are going to continue looking into those areas. And that concludes our report. Thank you.

MR. RUE: Christopher Davis for International Organizations, Conventions, and Standards, to be followed by Jim Moseley, Jr., Marine Ecology and Maritime Criminal Law.

And I think we owe Chris Davis a round of applause for becoming a member of the Executive Council of the CMI.

MR. DAVIS: Thank you. And good morning Mr. President, members, and guests.

The MLA Committee on International Organizations, Conventions, and Standards met on Thursday afternoon. We began the meeting with presentations by our three Subcommittee Chairs. Those are Bob Clyne for Classification Societies; Alan Van Praag for the Comité Maritime International; and Larry Brennan for International Law of the Sea.

Thereafter Michael Sturley provided us with an update on the UNCITRAL draft instrument on transport law. You have already heard a detailed report this morning.

This was followed by a discussion of some of the other work of UNCITRAL in the area of arbitration jurisdiction, which Don Kennedy is following; and the draft UNCITRAL Convention on electronic commerce, which George Chandler has been monitoring.

We were fortunate to have with us Captain Bill Baumgartner of the U.S. Coast Guard, who provided us with an update of the work of the IMO Legal Committee, which just met in London. The topics covered included Suppression of Unlawful Acts, or SUA, Convention and Protocol, which is scheduled for a diplomatic conference in October of 2005.

Captain Baumgartner also provided us with an update on the new Wreck Removal Convention, which, along with the issue of places of refuge, continues to be a subject of intense interest for the IMO Legal Committee and the European Union, particularly in light of the aftermath of the PRESTIGE casualty.

After Captain Baumgartner, we heard from our Vice-Chair, Phil Buhler, who provided a detailed analysis on the 2003 Protocol establishing a third tier of compensation for the International Oil Pollution Compensation Fund, which is now available under the 1992 Civil Liability Convention, or CLC, and the separate Fund Convention. With Spain's ratification of the

2003 Protocol two months ago, this Protocol has now reached entry into forced criteria, so it may be applicable to some of your clients that have the misfortune of having a pollution incident in one of the contracting states.

I would also like to remind you of two upcoming conferences that are being organized by the Comité. The first is a CMI colloquium in Capetown, South Africa, which is scheduled for February 12th through 15, 2006. The program has yet to be finalized, but will be available shortly on the website at www.cmi2006capetown.info. I'm advised that some of the sessions will include marine insurance, places of refuge, limitation of liability, and fair treatment of seafarers.

Michael Marks Cohen has done substantial research on the issue of air fares. It's not easy to get there. February is also the high summer season in South Africa. So if you are interested in attending, you may want to call Michael and obtain the benefit of his research.

Also, please encourage the young lawyers in your firms to consider attending. The CMI is offering a prize. It's an essay competition. The subject is "The Fair Treatment of Seafarers Following a Maritime Incident." The prize is an invitation to the Colloquium in Capetown. The winner will receive a paid registration and reimbursement of economy airfare. The deadline for receipt of the essays is October 31, 2005, and Larry Kahn of the Young Lawyers Committee and our Committee Secretary has the relevant details and requirements for the essay.

Finally, for those of you who wish to attend, who wish to plan well in advance, the CMI 39th International Conference is scheduled to take place in Greece from October 13 to 17, 2008. It will take place at a resort hotel near Athens. The conference was initially scheduled to take place in May of 2008. It was moved to October in order to obtain more favorable hotel rates. Further details of the conference will be available in due course.

Mr. President, that concludes the report of the IOCS Committee. Thank you.

MR. RUE: Thank you, Chris.

Jim Moseley, Jr., of Marine Ecology and Maritime Criminal Law, to be followed by Bruce King of Marine Financing.

MR. MOSELEY: Thank you, Mr. President, members of the Association.

Our Committee met on Wednesday in the law offices Thacher Proffitt. We had well over 70 members in attendance. We had some lively discussions, and part of that is because of the attendance of people such as Captain William Baumgartner of the U.S. Coast Guard and from the Department of Justice, Mike Underhill. We do appreciate government involvement in our Committee because it gives us an opportunity to discuss some of the recent and relevant issues.

Our Committee began its discussion with our former Chair, Matt Marion of Connecticut, reporting on four bills that are currently pending before Congress dealing with ballast water discharges, as well as record-keeping. Our Committee will continue to monitor those bills. And right now we are trying to read the tea leaves to see where this legislation is going.

Our Committee also heard from Kim Jefferies of GARD P&I Club, who gave us a thorough discussion of the CLC Convention, as well as some current trends in the European Union. This talk was given to us from a P&I Club perspective. We certainly appreciated your time and participation.

Tom Russo of New York led a very lively discussion concerning corporate officer liability, which is becoming a current trend that we are seeing. Our discussion primarily focused on the recent case in the Southern District of Florida, *United States v. Stickle*. In that case the chairman of Sabine Transportation Company was sentenced to 33 months in prison and fined extensively. He was not convicted under the theories of the "responsible corporate officer doctrine," but was actively involved in the ordering of discharge of contaminated grain and oil in the ocean. This also led to a lively discussion concerning criminal jurisdiction, and certain things that are happening with record books, as well as other activities.

Our Committee also heard from Bruce Dalcher, who reported on a mismatch between oral record book regulations and 33 CFR 151.25 and the 1991 revision by the Marine Environmental Protection Committee of the IMO.

Our Committee was lucky enough to hear from Larry Kiern, as well as Dave Dickman, concerning recent updates respectively on Federal legislation and criminal law. Gene O'Connor gave us an update on the aftermath and the continuing cleanup and other legal matters pertaining to the Athens spill.

We look forward to seeing everyone in Scottsdale in the Fall. And this concludes my report.

MR. RUE: Thank you, Jim.

Bruce King for Marine Financing, to be followed by Steve Rible for Marine Insurance and General Average.

MR. KING: The Marine Financing Committee and its Subcommittees met yesterday.

We are carrying on with my predecessor's tradition of having the main Committee meeting devoted principally to substantive discussions, so we heard presentations on the impact of the Patriot Act on transactional practice, maritime taxation and the transactional implications of *Stewart v. Dutra Construction Co.,* a recent Supreme Court case.

We also voted to have the Chair of the Yacht Subcommittee, Mark Buhler, to prepare a letter for Tom Rue to send to the Coast Guard. It would be a petition for a rulemaking requesting the Coast Guard to adopt regulations that would deal with some technical difficulties in the interplay between transferring vessels from state registration to federal and vice versa; and to deal with the situation regarding builder's certification and the manufacturer's statement of origin, which provides some opportunities for fraud, and some other technical details on vessel documentation.

In addition, the Coast Guard is in the midst of a rulemaking on the documentation of vessels that are financed under the coastwise leasing statute, and we are asking Tom Rue to send a letter to the Department of Homeland Security and the Office of Management and Budget to expedite the release of those regulations to assist those financing projects.

Three working groups are now functioning, and if any of the members have a desire to participate in these, we would like to hear from you.

Larry Rutkowski is forming a group to examine Section 1110 of the Bankruptcy Code and to see whether there should be an amendment to that dealing with private ship financing projects.

The Committee has formed a working group to examine the question of whether the ship mortgage statutes should be amended to adopt the practice in Canada and other countries of documenting a vessel at the time

construction commences so that a construction mortgage can be recorded at that time, which could assume a full preferred mortgage status when the vessel is completed. We'll be examining the various practices in some states that actually have statutes dealing with vessel construction financing. We will then have a working session in Scottsdale to see whether this statute is feasible and advisable.

In addition, the Practice and Procedure and Marine Financing Committees have formed a joint working group to be chaired by John Edginton that will examine whether anything should be done about the fact that in some districts marshal's commissions on sales of vessels *in rem* are being assessed on either the fair market value of the vessel or the amount of the debt instead of just the amount of the bid. Phil Berns has assured us that he has nothing to do with how that came to be in various districts, but that didn't prevent one of the Subcommittees from adopting a resolution chastising him for letting this happen.

That concludes my report.

MR. RUE: It's a religious experience. Thank you, Bruce.

Steve Rible for Marine Insurance, to be followed by John Schaffer of Marine Torts and Casualties.

MR. RIBLE: Good morning, Mr. President. Can everyone hear me?

The meeting of the Committee on Marine Insurance and General Average was held on Wednesday at the offices of CNA Marine. I would like to thank Mary Ann Bayard for taking care of us while we were there. We were quite a crew, about 35 people. It was well attended.

We received briefings, of course, from our Subcommittee Chairmen. On the general average front, Jonathan Spencer spoke to the fact that the Association of Average Adjusters has proposed a rule to deal with the interest awards under the New York-Antwerp Rules of 2004. George Zacharkow, our Subcommittee Chair on Cargo, discussed recent precedent involving cargo insurance coverage issues. He also discussed jeweler's block insurance, which under state regulations falls within marine insurance. Also John Woods conducted a review of cases addressing hull and P&I insurance coverage issues.

Our Vice-Chair, Gene George, alerted us to the fact that there is a new bill—well, it's not all that new. I'm sure you've all been hearing about it. It

was written by Senate Republicans and is pending in Congress. It would create a 124-billion dollar trust fund financed by the asbestos manufacturers and their insurers. The intention is to compensate asbestos victims while shielding the companies from crippling jury rewards. Gene will speak on the topic of the "Asbestos Crisis" at our next Scottsdale meeting.

Finally, we were privileged to hear from two guest speakers on the topic of handling cargo and hull claims. Mr. Brian Sales, Vice President of the American Hull Insurance Syndicate, addressed his company's policies and practices regarding hull claims. Mr. Robert Fox, an Assistant Vice-President at Ace USA, spoke on the practical aspects of cargo claims administration.

As always, copies of our Marine Insurance Newsletter are located actually in the front of the door and out behind the door, if you are interested.

Thank you, Mr. President.

MR. RUE: Thank you, Steve.

John Schaffer for Marine Torts and Casualties, to be followed by Grady Hurley of Offshore Industries.

MR. SCHAFFER: Good morning, everyone.

The Torts and Casualties Committee met at 2:00 p.m. yesterday afternoon, and we had 58 members and a lively conference, although I had to do a lot of kicking to keep people participating.

In addition to monitoring developments regarding asbestos and proposed legislation, we continue to keep our eye on the area of the law of punitive damages.

We also talked over tort reform in general.

Furthermore, we discussed and reviewed several significant limitation and personal injury decisions, including two U.S. Supreme Court cases and other opinions from all around the United States involving 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. RUE: Thank you very much.

Grady Hurley for Offshore Industries, to be followed by Andy Goldstein of Practice and Procedure.

MR. HURLEY: Thank you. Good morning, Mr. President, distinguished members and guests and Mr. Burns.

The Offshore Industries Committee met on Thursday afternoon with 21 members in attendance.

A discussion was held concerning current topics being raised by various offshore associations. These topics included offshore indemnity and boarding agreement obligations, offshore uninspected vessel issues, and uniform safety standards in the Gulf of Mexico. There was also a discussion concerning discovery rules as it relates to emails and e-documents. Professor Michael Sturley was our distinguished speaker from the University of Texas. He spoke on the *Dutra* decision and its effect on special purpose vessels which operate in the offshore industry.

As an aside, I should report to the Board that in *Dutra* they upheld the Fifth Circuit decision in *Pavone,* which may be of special interest, because floating gambling structures that are permanently moored will not be considered vessels, and there will we no maritime liabilities for those structures. There is a lot of interest as to how *Dutra* will be applied to the offshore vessels.

Also, our Secretary, Ryan Acomb, presented some current Fifth Circuit decisions. And also there was a discussion on the formation of a Subcommittee concerning our email newsletter. Should any member of our Association be interested in receiving our biannual newsletter, please contact Ryan Acomb.

Lastly, Mr. Chuck Lane of our Committee is working on a distinguished guest speaker for our meeting in Arizona.

We concluded our meeting yesterday afternoon. And that is our report, Mr. President.

MR. RUE: Thank you, Grady.

MR. BERNS: Mr. President, point of order. I have a point of order. Normally I would move to strike the remarks. Instead, I will move to just strike the speaker.

MR. RUE: Motion denied. Andy Goldstein of Practice and Procedure, to be followed by Tom Russell of Recreational Boating.

MR. GOLDSTEIN: Good morning, Mr. President, officers, guests and members of the Association.

Before I commence my formal remarks, I would like to thank the firm of Healy & Baillie, and specifically Mr. John Kimball, for use of their conference room facilities. They supplied coffee and cakes, and I'm going to have the bill submitted to Pat Bonner for payment.

The meeting of the Practice and Procedure Committee commenced at about 10:00 o'clock in the morning on Wednesday the 4th. Twenty-four members attended and participated in a heated discussion on several topics. One might remember that Mr. Phil Berns is a member of this Committee, and therefore, by just that addition, there would be heated discussion on a number of topics.

We are at the end of a long road that has led to the enactment of the amendments to Rule B and Rule C. It was decided, rather than making changes to the Local Admiralty Rules on those two subjects, that we would take a look at the entire Local Admiralty Rules and see if there is any updating that should be done, along with the changes to Rule B and C.

Members of the Committee that have been activated for this purpose are Michael Hardison, who is the Chair; Josh Force, Robert Zapf, Alan Van Praag, Jim Bartlett, all of whom volunteered. In the case of the ubiquitous Mr. Phil Berns, he was just added to keep him active in the Association after he retires.

Mr. Berns reported on the status of proposed Rule G. A short discussion took place as to whether we should wait for the final enactment of Rule G until we work on the Local Admiralty Rules. It was decided that we should go ahead with the Local Admiralty Rules and see how Rule G affects it. However, most of us feel Rule G doesn't affect the Local Admiralty Rules.

Alan Van Praag, as reported earlier today, reported on the recommendation and enforcement of foreign judgments. John Edginton reported on the progress being made in electronic communications.

A discussion took place on the *Allied Maritime v. Rice Corporation*, a decision emanating out of the Southern District of New York, in which it is presently on appeal to the Second Circuit. Jim Bartlett indicated that a request had been made of the Association for an *amicus curiae* brief. The Association decided not to follow through.

Mr. Rue and I had received a letter from the Honorable James M. Fitzgerald, a United States District Court Judge for the District of Alaska, containing a request that the Association support his position for preemptive bonds established by the defendant, which in his opinion would eliminate the need for seizure. A heated discussion took place, with Mr. Robert Zapf of Los Angeles taking the lead against Judge Fitzgerald's suggestion. The unanimous vote was taken by the Committee that Judge Fitzgerald's proposal would not be a solution to any problems that we might see. Mr. Zapf, in addition, pointed out that notifying the shipowner that the attachment is coming or seizure is coming might cause the shipowner to deviate.

Ed Powers of Norfolk, Virginia, raised the issue which has been discussed earlier today regarding which basis do you use to determine the marshal's commission: the sale price at the auction or at the default price. We will monitor, however, the two jurisdictions in the territories of the United States where those issues are occurring.

That is the report of the Practice and Procedure Committee. Thank you.

MR. RUE: Thank you, Mr. Goldstein.

Tom Russell for Recreational Boating, to be followed by Dennis Bryant, Regulation of Vessel Operations.

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

The Recreational Boating Committee met yesterday in the Commodore Room of the New York Yacht Club. We had more than 43 members and guests in attendance, and there was standing room only.

Our meeting began with a review of recent case law. Our Vice-Chair, Frank DeGiulio, led the discussion. Recently there have been a number of insurance cases involving recreational boats in which the insurance companies all seem to be winning. Frank, in fact, said he didn't find a single case in which insurance companies had lost in these coverage cases. I pointed out that Frank was receiving many of the cases from insurance companies.

Frank also presented our Committee's newsletter, Boating Briefs. I would like to thank him and his firm for doing that. It's a tremendous effort that they do for us twice a year. I would also like to thank those of you for submitting cases to us, people like Michael Marks Cohen and James Mercante. As it turned out, many of the people in our meeting handle the matters that we are reporting on.

We had three guest speakers: Michael Taylor, Richard Tracy and Tony Filiato.

Michael Taylor is President of Taylor Marine Services. He told us about the role of a trained surveyor in the oversight and management of new yacht construction projects. He has been involved in many of these very large catamaran projects, including some that are 140 and 240 feet and longer. In fact, some of these vessels will do 70 knots. He told us about the MIRABELLA, which is a 286-foot sailboat with a 312-foot mast; and Paul Allen's yacht, which has 72 crew, including eight for the tenders alone. He emphasized the importance of involving admiralty counsel very early in the project, which was music to the ears of our Committee members.

Our second speaker was Richard Tracy of Alliance Marine Risk Managers. He discussed the current state of the marine insurance market, including recent underwriting changes. He said there were fewer underwritings these days but that insurance on many yachts remains a good value. He said more surveys are now being required to avoid over-insuring and that policy wording is being rewritten to maintain profitability. This comports with the trend Frank DeGiulio observed of insurers prevailing in coverage disputes.

Our third speaker was Tony Filliato of Signal Administration, and he told us about a proposed amendment to the Longshore and Harbor Workers Compensation Act, H.R. 940. This bill is called the Recreational Marine Employment Act of 2005. The amendment would exempt all workers in the recreational boating industry from the Act's coverage. This bill was introduced because recreational vessels are getting larger, and the current carveout of vessels 65 feet in length and under is considered too narrow. According to one study, there are more than 400,000 recreational vessels longer than 65 feet registered in the U.S. today. We formed an *ad hoc* study group to follow this bill.

We ended our meeting with a special tour of the New York Yacht Club's rare book room. This was arranged by Lars Forsberg of our Committee.

Mr. President, that concludes our report.

MR. RUE: Thank you, Tom.

Dennis Bryant of Regulation of Vessel Operations, to be followed by John Ryan of Stevedoring and Marine Terminals and Shoreside Services.

MR. BRYANT: Thank you, Mr. President, members, guests.

Our Committee met on Wednesday. The first order of business was to change the name of our Committee to the Committee on the Regulation of Vessel Operations. In the interest of time, I will not repeat the old name.

Captain Baumgartner from the Coast Guard made a presentation. Some of his presentation has already been covered.

We had a lively discussion of maritime security. It's a growing factor in a lot of our work. None of it has gotten very big, but it continues to be there in the background. Captain Baumgartner confirmed what most of us had suspected all along: that the armed guards that Immigration frequently requires on foreign vessels have no law enforcement authority, no right to use their weapon in anything other than self-defense.

We also discussed the recent change to the OPA 90 where non-tank vessels are going to have to have vessel response plans as of 25 August this year. The Coast Guard is wrestling with the statutory change, just as we are, just as our clients are. They issued a NVIC providing guidance on what the vessel response plan should probably look like. They will issue a notice very soon which will look like an ANPRM. They have absolutely guaranteed us that the regulations will not be out by the time the statute comes into effect.

One of the problems that they are facing, which is not unique to the vessel response plan issue, but has highlighted the issue, is the international tonnage convention problem. The vessel response plans will now apply to all vessels 400 gross tons and greater ITC. Many U.S. vessels, particularly older U.S. vessels, are not measured by ITC, and you can't do a straight mathematical conversion from regulatory tonnage to ITC tonnage. And no one has got a good solution.

This has been a problem for the past 10 or 12 years, because the way the U.S. instituted the International Tonnage Convention was a going-forward concept, so that any new requirements that came into effect would be triggered by ITC rather than regulatory tonnage. It wasn't a big problem until now, when we have now captured the entire vessel industry. It is unresolved, but it is going to cause a lot of difficulty for a lot of vessel owners with smaller vessels.

Richard Lorr from MARAD spoke to us on Title 11. He pointed out that the administration once again has not asked for any new Title 11 funding. That's been *de rigueur* for the past few years. Congress, on the other hand, always dumps money into the program. There is no reason to expect otherwise this year.

Scrapping of obsolete government vessels is another problem. MARAD has recently been taken to task for not scrapping vessels fast enough. The GAO report failed to mention that Congress does not appropriate enough money to scrap the vessels.

Amy Larson, Chief Counsel for the Federal Maritime Commission, spoke to us and advised that the commission recently discontinued its docket on shipping conditions in China. The Chinese have recently signed a bilateral maritime agreement with the United States, and it has become significantly easier for U.S. shipowners and operators and for the U.S. NVOCCs to set up and operate their businesses in China. They will continue to monitor the situation. But they were very helpful, and those problems are behind us. She also pointed out that the agency recently adopted a rulemaking allowing NVOCCs to enter into confidential service arrangements very similar to the service contracts that ocean carriers have been able to do for some years.

And finally, ballast water management. We've had some discussion of it earlier today. There was a somewhat disturbing decision out of the Federal District Court in the Northern District of California recently. Various environmental groups sued the EPA challenging their 1973 waiver under the national pollutant discharge elimination system of routine discharges from vessels. They were challenging the ballast water waiver in particular, saying that that activity should be regulated by the EPA.

The problem with—there are several problems with the decision, which failed to note that Congress has enacted various ballast water management statutes in the past 28 years since the waiver was adopted. But, in

addition, the court order as written voided the entire waiver program, not just the ballast water section; so that any, if you read it literally, any routine discharge from a vessel now requires a permit from the EPA. And this would include things such as use of the sea chest and the discharges of small quantities of oil from the stern tube. We will see how that gets resolved.

Switching hats for a moment to my other Committee, which is the *Ad Hoc* Committee on Title 46 Codification. We almost had the bill enacted in the last Congress. At the last moment the cabotage group discovered the legislation which had been lingering for 18 months or so, but they discovered it at the last moment and had one of their friends in the Senate put a hold on it, so it never reached the Senate floor. They ended up, after they had a chance to read it, basically requiring that a comma be moved. That was promptly done, but not before that session of Congress ended. The bill has been reintroduced.

In the interim, the *Ad Hoc* Committee and I need to thank each and every member of the *Ad Hoc* Committee for their hard work. It's a large Committee. A lot of people put a lot of time and effort into making contributions to that. In the interim, we went back and looked at it one more time and made some final suggestions to the House Law Revision Counsel, and they were almost entirely adopted. The House Judiciary Committee is waiting for a letter of support from NOAA. Once they get that, they expect to report the bill out.

The House is expected to pass it promptly, as they did in the last Congress, and we expect the Senate to do likewise. And I hope to be able to report in Scottsdale that the Title 46 has now been codified. Knowing Congress as I do, I wouldn't be surprised if it lingers and goes into the next session of Congress.

But I am quite confident that the 109th Congress will, in fact, codify the uncodified portions of Title 46, with the exception of COGSA, which will be a note. But everything else will be codified, and we will have positive shipping laws in the United States in one location instead of two or three.

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

MR. RUE: Thank you, Dennis.

I would note that Dennis and his Ad Hoc Committee have worked very diligently, on some occasions very rapidly, to respond to the government's request, and we owe you a debt of thanks for that, Dennis.

I also note that I have knowledge of a case in which a scrapper offered to purchase one of the MARAD vessels, but he was politely told that was not possible.

John Ryan of Stevedores, followed by Larry Kahn of Young Lawyers.

MR. RYAN: Good morning, Mr. President, guests, members. We met yesterday at Healy & Baillie. I thank them for their hospitality. New about our Committee is that we are now the Stevedoring, Marine Terminal, and Vessel Services Committee. So the Shoreside Services Committee had a brief stellar history.

We have three new officers coming in. The Committee will be headed by Douglas P. Matthews of New Orleans; Vice-Chair will be Ann-Michele G. Higgins of Philadelphia; and Secretary F. Nash Bilisoly of Norfolk.

Yesterday we appointed a new head of the Freight Forwarders and Custom House Brokers Subcommittee, and that is going do be Dave Loh of New York. Clay Rankin of Mobile has agreed to chair the Subcommittee on Ship Repair and Shipbuilding.

I urgently ask that members of the Association who have partners or friends in their different jurisdictions interested in ship repair and ship-building, that they contact Clay or any member of the Committee. We want to get that Subcommittee up and running. It's something new to the Association, and I hope you will all pitch in on that.

That's my report. Thank you.

MR. RUE: Thank you, John.

Larry Kahn for Young Lawyers, to be followed by Kim Kearney for Uniformity.

MR. KAHN: Good morning, Mr. President, guests and fellow members. The Young Lawyers met yesterday at Freehill Hogan & Mahar. We had a great turnout, numbering approximately 40 members.

We started off with a discussion of the indexing project, which led to further discussion of liaising with the Website and Technology Committee on their efforts to create blogging on the MLA website. And we hope to be able to coordinate on that Committee shortly.

We also discussed the current status of the state-by-state CLE project, which is nearing completion. There are a few odds and ends before we can turn over to the MLA a comprehensive study of all of the U.S. jurisdictions' CLE requirements. This should help the entire membership whenever a CLE program is put on by the MLA by allowing them more easily to obtain CLE credit in their various jurisdictions.

We also discussed some new projects coming up.

First, we have been asked to draft model admiralty jury instructions. We have some volunteers for that project, and we hope to get that started soon. As some of you know, there are some states that have model admiralty jury instructions and some that do not. We thought that it would be a good idea to compare the instructions in those states that had them and to help create something that could be used hopefully across the board in all jurisdictions.

We also discussed a new marine financing project that Bruce King asked us to work on regarding the greater effect of the *Dutra* decision on contracts. And I believe that is a good sign—indicating that our last project for the Marine Finance, combined with Marine Fisheries Committee, was well received—and we are now being assigned new tasks by those Committees.

And, of course, Committee Chairs, you are welcome to assign new tasks to the Young Lawyers Committee. It is what we are here to do. We are happy to help the Association, and we usually get a very good response and a very quick one.

We also discussed the CMI Young Lawyer International Law Contest that is dealing with the treatment of seafarers. You have heard about that from Chris Davis already, so I won't detail this matter any further, but I do have the details for those who are interested in learning more. We did note that there are some details of the contest that remain to be forthcoming, and we will follow up on that and be able to post those soon.

We also had a presentation by Katharine Newman, our Vice-Chair, who is also senior counsel at CONOCO Phillips, and Charlotte Valentin, who is the claims executive at Anchor Marine Claims Service.

They spoke on the topic of—and this should be of interest to all—keeping clients happy, or at least satisfied with status reports; how to communicate more effectively with clients to keep these relationships going,

how to give the clients what they need in order to go forward, and how to learn what your clients need and want.

We had our social event last night. It was a raging success. We had probably more people than we've had at any other social event in a long time. That is saying something. We would like to thank the marine consulting firm of Martin, Ottoway, Van Hemmen & Dolan, Inc., who sponsored our cocktail hour, which was very well received. We had a terrific time and we stayed out quite late and enjoyed ourselves.

MR. RUE: That's the reason you had a larger turnout.

MR. KAHN: I would also like to take this opportunity to thank my past Chairs for the support that they gave to me as Chair of this Committee.

I don't think any of my predecessors asked so many of his or her predecessors to do so much. And I really thank you all for the work that you did, especially at our last meeting in New Orleans, which was also a great success. I also thank my fellow officers, Katharine Newman and Dana Henderson, for all of the work they have done in supporting the running of this Committee.

I wish Katharine a lot of luck with taking over this Committee. I know that she will do a great job.

And I would like to point out that we must be the perfect Committee within the MLA, because even with all the changes, we're the one Committee that has essentially remained the same.

So with that, I thank you for your attention. And that concludes my report.

MR. RUE: Thank you, Larry.

Kim Kearney for Uniformity, to be followed by Marion McDaniel, the 2005 Planning and Arrangements Committee Chair.

MS. KEARNEY: Thank you, Mr. President. Good morning, members and guests.

The Uniformity of U.S. Maritime Law Committee held a very well attended meeting on Wednesday at the offices of Donovan Parry McDermott & Radzik.

We first discussed the Supreme Court's recent decision in *Stewart v. Dutra Construction*. Pat Cooney of Houston, who wrote an amicus brief on behalf of the International Association of Drilling Contractors, provided us with his insights on the competing interests involved in that case and *Stewart's* anticipated impact on various types of marine employers.

Tim Lord of San Francisco discussed the Supreme Court's decision in *Kirby v. Norfolk Southern* and alerted the Committee to an appeal pending in the Ninth Circuit, *Green Fire Marine v. M/V HYUNDAI LIBERTY*, in which the Court will consider *Kirby's* application to the enforcement of forum selection clause in contracts of carriage.

Professor John Paul Jones of the University of Richmond and Ridgely Porter of Portsmouth discussed their involvement in *RMS TITANIC,* which will call upon the Fourth Circuit to consider the standards for granting comity to the enforcement of judgments of foreign tribunals in salvage actions.

Professor Jones also made us aware of *Garlock Technologies v. Little,* in which the Supreme Court of Virginia is being asked to consider whether admiralty or state law should apply to personal injury and wrongful death actions arising out of shipyard workers' exposure to asbestos on vessels in shipyards. The trial court held that admiralty jurisdiction exists under the jurisdictional tests articulated by the Supreme Court in *Sisson* and *Grubart*.

We will continue to follow those cases with interest.

And that concludes my report.

MR. RUE: Thank you, Kim.

Marion McDaniel, 2005 Planning and Arrangements Committee.

MR. McDANIEL: Thank you, Mr. President.

Let me say this first: I want to thank and I think the Association should appreciate and will appreciate all of the work that the members of my Committee are doing. We have some real pros, and I'm looking forward to a great meeting. I think you will enjoy it. And I want to publicly at this point recognize the work that they have been doing.

Your Committee met this morning in its continued efforts to finalize plans for our meeting in Scottsdale.

The first part is when. It's been announced, November the 2nd, which is a Wednesday. We will start our meeting with a reception and some sporting events. We will then continue through the week. Thursday and Friday we will have CLE in the morning, Committee meetings in the afternoon. And on Saturday we will have the general meeting and a cocktail farewell party that evening. The plan is for departure on Sunday. That is the when and kind of program. The where, the where is at the Fairmont Scottsdale Princess in Scottsdale, Arizona. It is a magnificent facility. I don't think we have been in a place this nice in a long time.

There are flyers posted outside the door and I invite you to pick up one of these. The website for the hotel is listed at the bottom. It's www.fairmont.com. They have a slide show which is very good and will give you a good general overall picture of the hotel.

Again, please pick up the flyers. I went to a lot of trouble to tote these things up here.

A little more about the formal portions of the meeting. We are going to strive to have about 12 hours of CLE, both in the morning meetings, and then what we will pick up in the various Committee meetings. So make note of that. Hopefully that is enough that if you are lacking some hours, or perhaps you can even fulfill the total number of your hours by attending those things.

Let's go to the social side of it, somewhat. We are going to have an event at the Heard Museum on Friday night. It's a wonderful facility. We'll have a cocktail party and a buffet or seated dinner. We're working on another off-campus event for Thursday night.

On Wednesday night when you arrive we will have our President's Reception, the idea being we will have cocktail food, but for folks that want more of a dinner, there are a number of excellent restaurants, and we will make you aware of those. And we would think that people would want to do the same thing Saturday night. We have gotten away, as you may suspect, from having a formal dinner dance on Saturday night.

Sporting events: We are going to have a full slate. We will have golf, and it is going to be at the TPC, which is almost next door, on Wednesday. Anybody that knows anything about golf knows it can be expensive and it picks up a bit in Arizona. They have great courses and they charge you for them. So start saving a little lunch money. There is going to be tennis. There are outstanding tennis facilities right at the hotel. It is magnificent.

We will have a fun walk and run, as we usually do. The course will be around the resort.

Let me mention this: Any of you that went to the Hyatt Gainey ten or twelve years ago, the Scottsdale Princess is north of there, off Scottsdale Road that leads to Carefree. It's northeast of central Phoenix.

We're also going to have a sailing event. Everybody knows that Scottsdale is the Mecca of sailing. That event will probably take place on Saturday afternoon after the General Meeting.

I am working with our President in perhaps maybe getting the General Meeting to start slightly earlier, conclude say by 11:00 or 12:00, where we then have a nice gap for people that want to go sailing or sightseeing before we have the cocktail party that evening.

I hate to bring this up, but there is an absolutely wonderful spa. So I want to publicize that. It is a really nice facility.

I think that kind of covers those events during. And there will be more about this. We're going to utilize our website very heavily both for registration purposes. We're going to have an extensive CLE program, so you need to talk it up among your partners and your associates.

There will be some pre-meeting events. We will have something arranged for a trip up to the Grand Canyon, which will be a non-MLA-sponsored event. It also is commercially available. You can go for half a day and fly over it or you can go up for a day, land, have lunch, and then fly back. If you are doing it on your own, you better set aside a day. It's a pretty good trek.

And there may be some other things. We will publicize other local events and places of interest. We will also publicize a list of restaurants. We anticipate that people will want to go out to dinner on Wednesday night after the reception and perhaps on Saturday night. We will give you suggestions about restaurants in the area.

I'm enthusiastic about it. And, again, I'm very fortunate to have a very enthusiastic group working with me.

I look forward to seeing all of you there. Please pick up one of the flyers.

Thank you, Mr. President.

MR. RUE: Thank you.

There will be a Committee Chairs meeting following this meeting. There will also be a very short Board of Directors meeting following this meeting. The Committee Chairs gather here, the Board over there, please.

I also want to take this occasion to thank Glenn Goodier and Dwight LeBlanc for a wonderful, wonderful meeting in New Orleans in November. You did make that meeting. You really did something special. We owe those two guys and their helpers a deep debt of gratitude. Thank you.

Mr. Wiswall, would you join the officers on the podium, please? That's you, Frank.

You earlier heard that Frank retired from being a Vice-President of the CMI, and the reason for that was he had served all the years he could serve. He was ineligible to be reelected. And, Frank, we want to recognize your service to the CMI and to the MLA. And we have prepared this certificate for you:

> The Maritime Law Association of the United States expresses its deep appreciation for the exemplary service of Frank L. Wiswall, Jr., during his distinguished tenure as Vice-President (1997–2005), and Member of the Executive Council (1984–2005) of the Comité Maritime International.
>
> Before his election to these high offices, Frank L. Wiswall, Jr., obtained his BA degree from Colby College, a JD degree from Cornell University, and a Ph.D. from Cambridge University. He practiced with the prominent maritime firm of Burlingham Underwood in New York City, and later became a much lauded Professor of Law at the World Maritime University in Malmo, and the International Maritime Law Institute at Malta, from which he received an honorary degree in 1999. Bringing his formidable expertise to his native soil, Frank L. Wiswall, Jr., was also a Visiting Professor at Tulane University School of Law.
>
> Frank L. Wiswall, Jr., is a member of the editorial board of the JOURNAL OF MARITIME LAW AND COMMERCE, the Editor-in-Chief of Volumes 6 through 6F of BENEDICT ON ADMIRALTY, and author of too many other scholarly works to name. Not content to restrict his endeavors solely to academic pursuits, Frank L.

Wiswall, Jr., has served as Harbormaster at Castine, Maine, and in the United States Coast Guard Auxiliary, First District Northern Region, from which he has received the Sustained Auxiliary Service Award. Serving his spiritual community, as well, Frank L. Wiswall, Jr., is also a Senior Deputy Chancellor and devoted member of the Anglican Catholic Church.

During his tenure at the CMI, Frank L. Wiswall, Jr., tirelessly devoted himself to the organization's many worthy projects. Among these are his work on Classification Societies, Safety at Sea, Acts of Piracy, and the Constitution of the CMI. At all times during these consuming and sustained efforts, Frank L. Wiswall, Jr., remained an active and contributing member of the MLA, where he is well-known and highly esteemed for his comprehensive and erudite reports as Chair of the Association's CMI Committee, not to mention his costume *de rigueur* of *chaussettes rouges*."

That's red socks.

Frank L. Wiswall, Jr., is also a master of the tradition of balm for the old itch of proctorial erudition.

Perhaps the greatest accomplishment of Frank L. Wiswall, Jr., was the winning of the heart of Elizabeth Nelson, who became his bride 30 years ago this month. Libby, as she is known to all, cheerfully accompanies Frank as he crisscrosses the globe, fulfilling his professional obligations as a Vice-President of the CMI, professor of law, and member of the Association.

Frank L. Wiswall, Jr., is an individual who truly has devoted his life to the service of others for the good of all mankind and shared without reservation his God-given talents and energy, particularly in teaching, scholarship, and leadership in the international community.

In consideration of the foregoing, be it RESOLVED that the Maritime Law Association of the United States expresses its sincere and profound appreciation for the service and dedicated efforts of Frank L. Wiswall, Jr., as a Vice-President and member of the Executive Council of the CMI, and its deep gratitude to our member, colleague, and friend for all of the work he has done and all the substance and the wit he has brought to our proceedings.

Be it further RESOLVED that a copy of this resolution be made a part of the permanent records of this Association.

May 6, 2005.

Thomas S. Rue, President

DR. WISWALL: I couldn't have said it better myself. I seldom am at a loss for words. But I want to take the occasion to thank all of the Past Presidents and Officers of the Association and the members for having given me the opportunity to serve in a capacity that has been the pinnacle of my professional life. Thank you so much.

MR. RUE: Now, Frank, just because you retired from the CMI Executive Council, you are not being put out to pasture. We still have a number of things for you to do.

I now call on Ray Hayden to make the report of the Nominating Committee.

MR. HAYDEN: Thank you, Mr. President, ladies and gentlemen.

The Nominating Committee met on Wednesday, May 4th, 2005. I'm pleased and honored to report the results of that meeting.

The following have been nominated for the Board of Directors for a term expiring in May of 2008: Dennis L. Bryant of Washington, D.C.; Allan Richard Kelly of Miami, Florida; Steven V. Rible of New York, New York; and John M. Ryan of Norfolk, Virginia.

For Officers of the Maritime Law Association for the coming year, the Committee unanimously endorsed for re-election for an additional year of service as a reward for their excellent service last year: Philip A. Berns of San Francisco, soon to be Las Vegas, for Membership Secretary; James W. Bartlett of Baltimore for Secretary; Patrick J. Bonner of New York for Treasurer; Warren J. Marwedel of Chicago for Second Vice-President; Lizabeth L. Burrell of New York for First Vice-President; and Thomas S. Rue of Mobile, Alabama as President of this Association.

Mr. President, I move for the election of these members for the positions indicated.

MR. RUE: Any further discussion? All in favor of the slate proposed by the Nominating Committee, please say aye. Opposed. The ayes have it.

Thank you for your trust and confidence in the other officers and myself. We will continue to endeavor to earn that trust and to advance the goals of the Association.

Let me just say a word about tonight's dinner at the Marriott Marquis. Cocktails are at 6:45, dinner at 8:00 o'clock. As of yesterday, we have 887 signed up, so there will be plenty of folks there. Please do not wear black tie; it is not necessary. I hope you didn't bring it with you. Come on out and enjoy the cocktails and the fellowship.

And unless someone else has another matter for the Association, that concludes the business.

Keith Heard our BIMCO representative.

MR. HEARD: Thank you, Mr. President. I am sorry for the lack of prior notice.

I would just like to apprise the members of the Association on the Association's relationship with BIMCO's Documentary Committee, and I take this opportunity to do that. Your Co-opted Delegate normally doesn't make a presentation at this meeting, but this happens to be the 100th anniversary of BIMCO's founding in 1905, so they are younger than we are, but they are happy to celebrate their 100th anniversary, and that will be in done in Copenhagen in three weeks' time at the BIMCO General Meeting.

I was preceded in this position by John Koster, and he was preceded by Michael Marks Cohen. Michael remains an active contributor to the workings of the Committee, even though at this point he has no official position.

Also serving on the Committee is another MLA member, Robert Shaw of Navios Corporation in Connecticut. Robert holds the position of U.S. Shipowner's representative to the Committee, and he has been very effective in that role.

For those of you who don't know, the Committee prepares drafts and refines standard contracts for the industry: bills of lading, booking notes, interchange agreements, all forms of charter parties, bareboat, time, voyage, passenger ship, heavy lift vessels. Look in BENEDICT ON ADMIRALTY

under the charter party forms and a substantial portion of those came out of the workings of the Documentary Committee.

I think that's it. Mr. President, that concludes my report.

MR. RUE: Thank you, Keith.

Again I remind you there will be a short meeting of the Committee chairs, if you will please join us up front, and a short meeting of the Board of Directors.

That concludes the business of the Association. Would someone like to move?

MR. HEALY: I move to adjourn.

MR. RUE: Mr. Healy has moved to adjourn. Is there a second?

All stand up and we're adjourned. Thank you.

FORMAL REPORT OF THE COMMITTEE ON MARINE INSURANCE AND GENERAL AVERAGE

The Committee held a very well-attended meeting on May 4, 2005, at the offices of CNA Insurance, for whose hospitality we are most grateful. Continuing the practice begun the previous fall, the Subcommittee meetings were held as an integral part of the Main Meeting.

Jonathan S. Spencer, Chair of the General Average Subcommittee, reported an unintended consequence of the removal of salvage from general average (with some exceptions) by the 2004 amendments to the York-Antwerp Rules. Shipowners that have advanced salvage on behalf of other participants in the common adventure are no longer entitled to recover interest on such advances. It also appears that certain liner consortia with pooling arrangements have in some instances advised their members not to apply the new edition but instead to follow the 1994 York-Antwerp Rules. Finally, it appears that matters including salvage settlements may take years to adjust under the new version of the Rules.

Before the other Subcommittee Chairs reported, James M. Craig, President of the American Institute of Marine Underwriters, addressed the

meeting with respect to the lead article in our Fall 2004 Newsletter, "Rescission of an Insurance Policy for Misrepresentation or Concealment of Material Facts," by John M. Woods. The article pointed out that, with variations from state to state, the party seeking to rescind a policy must prove that the insured's misrepresentation was material, as judged from the point of view of an individual insurer. Mr. Craig suggested that there needs to be some mechanism for establishing in advance what Is "material," and requested the group's input. This elicited a number of comments and suggestions for determining materiality, including:

a. the history of the insured's correspondence and discussions with the underwriter;

b. specific statements in the application for coverage and other submissions by the insured; or

c. issues that could be listed in a company's underwriting guidelines or in a Restatement.

The discussions begun at the Committee meeting appear destined to continue.

Cargo Subcommittee Chair George R. Zacharkow reported on a recent case including a misrepresentation issue, involving failure to list past losses on an application for all-risk coverage for a motor truck cargo operation. When trucks with no cargo in them were stolen the court upheld the insurer's denial of coverage for failure to disclose, because the unanswered questions about prior losses on the application were explicit. In another recent case arising from a sprinkler flooding loss, the carrier's motion for summary judgment was denied, where although a statement taken outside of court contradicted other testimony, it was not a false and willful statement under oath with a specific intent to defraud the insurer.

Opposite results were reached in two "jewelers block" coverage cases involving deliveries of jewelry by car to stores. Policies typically cover theft only if the jewels were in the custody of the delivering salesman at the time of the crime. In the first case, the court upheld the denial of coverage where the salesman entered the store to make a call and the jewels were taken from the parked car as he was walking back in its direction. In the second case, the court rejected a motion to deny coverage on summary judgment where the salesman claimed he fled into the store because he was being followed and the jewels were stolen as he was returning to the car to retrieve them. Citations are available from Mr. Zacharkow on request.

Finally, Mr. Zacharkow reported that the all-risk annotation project is ongoing, with the remaining work consisting primarily of homogenizing summaries written by a number of contributors.

Hull and P & I Subcommittee Chair John M. Woods summarized a recent case in which coverage was denied for damage to newer engines in a vessel over ten years old under specific policy language excluding "damage to engines in a 10-year old vessel." In another recent case, decided under New Hampshire law, summary judgment was granted to the insurer under the policy's criminal acts exclusion where the yacht owner had been convicted of negligent homicide in the death of a passenger. Finally, Water Quality Insurance Syndicate coverage for pollution cleanup costs was denied under the syndicate's "willful misconduct" exclusion where a fishing boat's master, mate and crew set out drunk and their boat grounded and sank while on autopilot.

With respect to the ongoing hull policy annotation project, Mr. Woods reported that a new form of policy was introduced in the U.K. in 2002 and updated in 2003. We are waiting to determine whether it will come into wide use in the London market. In the meantime the 1983 London and 1977 U.S. hull forms are still in use, with some changes desired, according to the responses to an AIMU proposal to update the U.S. form. The changes would be in the nature of cleanup and modernization, not a major rewrite, so it appears appropriate to proceed with the annotation project, for which volunteers are still being solicited.

The Committee's first special guest lecturer, Brian Sales of the American Hull Insurance Syndicate, then gave a very informative presentation on "Handling Hull Claims." He noted that while each claim is processed separately on its own merits, patterns and essential early steps in handling any claim can be identified. His involvement begins with receipt of notice of a claim from a broker or other source, at which time a claim file is opened. A constant flow of information is essential, the best source of which is generally the underwriter's surveyor, who should be appointed and on the scene as soon as possible. Reserves are set wherever possible on the basis of actual repair costs or estimates reported by the surveyor. Any open issues regarding the nature and extent of covered repairs should always be discussed before the work is done.

An adjuster collects all repair information and prepares the claim for submission to underwriters. If there is uncertainty about any issue, the adjuster should consult the lead underwriter before preparing the final adjustment.

A claims examiner reviews the adjustment to assure that it complies with policy requirements and that the proposed handling of specific items is consistent with past practice. It is important for the adjuster and claims examiner to be able to tell the assured that a particular expense is or is not being allowed on the same basis as in previous cases. It is also important to note the parties named in the loss payee clause and assure that they all are on notice of and approve any payment, to avoid the risk of being required to pay twice because funds were misdirected. This is most often an issue when a mortgagee is involved and is not paid, or has not approved disbursement of the funds to another party.

In general, payments should be fair, reasonable and clearly attributable to repairs occasioned by the covered casualty, not owner's work or supplies. While there are typically a number of underwriters on any hull risk, they usually operate through the lead underwriter, so that the assured has a single person or entity with which to interact. The lead underwriter will, where necessary, select attorneys with whom he is familiar and comfortable, or seek recommendations as to suitable firms in unfamiliar geographic areas. They should be given clear instructions as to their role and the adjuster's expectations, and be requested to assist in appointing surveyors and other specialists. Attorneys should be instructed to provide periodic status reports and bills detailing their work. An estimate of the cost of litigation should be requested early in the process to assist in setting a reserve. Where possible, the parties on the same side of a case, and their lawyers, should be encouraged to cooperate and present a united front to the opponent, to reduce expense and avoid creation of unfavorable case law.

Mr. Sales offered his "Top Ten Reasons You Know You Have Appointed the Wrong Attorney" (available from bsales@amhull.com), then closed with a thought that appeared to appeal to all of the private practitioners in attendance: The increasingly common "engagement letter" can restrain attorneys with too many rules – if an adjuster feels the need for such a letter, he has the wrong law firm.

The Committee's second special guest lecturer, Robert J. Fox of ACE, USA and manager of the marine claims unit, then gave an equally informative lecture on the subject of "Handling Cargo Claims." He seconded what Mr. Sales had to say on issues such as opening files, gathering information, hiring surveyors and setting reserves. Particular issues of current interest to any cargo claims department include changes in the terms of the standard cargo policy, technological advances, timely notice of claims, and efficient operation of the cargo claims process.

The typical ocean cargo policy is all-risk, with broad coverage including the period before transit begins, loading, carriage, discharge and through to destination. Because of the advent of email and other rapid means of communication, insureds and their customers expect immediate response to any claim of cargo loss or damage. Things the insured can do to assist its underwriters in responding rapidly include taking exceptions on delivery receipts, promptly notifying the carrier of damage or loss, and retaining the cargo in as-delivered condition until a joint survey can be completed.

Underwriters realize that insureds desire prompt resolution of claims, even though the assured may have delayed in promptly providing notice of damage. Underwriters, however, must be able to verify the actual value of the property lost or damaged before paying a claim. The adjuster's goal is to resolve as many claims as possible in a just and efficient manner.

We are grateful to Messrs. Sales and Fox for enhancing our understanding of the nuts and bolts of the claims function in their respective specialties.

Vice-Chair Gene George made available copies of the Committee Newsletter, which in addition to case summaries contains a lead article by Committee Chair Stephen V. Rible, entitled "Insuring a Happy World" on the meanings of "fortuity" and "fortuitous event" in marine insurance policies.

Articles and case summaries for future Newsletters may be submitted to the Chair or Vice-Chair via email at stephen.rible@mendes.com or ggeorge@rayrobcle.com, respectively.

Respectfully submitted,
Gene B. George, Vice-Chair

FORMAL REPORT OF THE COMMITTEE ON MARINE TORTS AND CASUALTIES

The Committee met on Thursday, May 5, 2005 in New York, New York at the spring meeting of the Association. Fifty-eight members and guests participated in a lively meeting on proposed changes in legislation and important cases and developments affecting maritime personal injury and limitation of liability practitioners.

The Supreme Court

On February 22, 2005, the Supreme Court unanimously (but without the Chief Justice) decided *Stewart v. Dutra Construction Co.* ___U.S.___, 125 S. Ct. 1118. Stewart was injured on a scow that bumped a huge dredge used to make a tunnel in Boston Harbor leading to the airport. He was employed by the dredge owner as a marine engineer. The dredge "Super Scoop" was moved by manipulation of its anchors and cables every few hours.

Plaintiff sued under the Jones Act and alternatively with a third-party Longshore Act 905(b) case against his employer as a shipowner. To sue under these acts the First Circuit held that a vessel must be involved and the dredge, without its own motor power and used for dredging not transportation, was not a vessel.

The Supreme Court reversed, taking a more liberal view of the meaning of a vessel. Dredges were generally considered vessels in early cases, and Justice Thomas held that the dredge that did move was a vessel, even though stationary at the time of the accident. Only those boats and platforms that were held down in one place over a long period would not be classified as a vessel in navigation. Dutra had acknowledged that the plaintiff was a member of the crew of the Super Scoop and spent 99 percent of his time on the dredge, so the issue came down to defining a vessel.

The decision does not appear to make it clear whether Stewart was ruled a seaman under the Jones Act or a shoreside worker under 905(b) of the Longshoremen's Act.

Both 905(b) and the Jones Act refer to "vessels". For either purpose, the Super Scoop was a vessel. Anything capable of being used for transportation on water would be a vessel under an old definition now in 1 U.S.C. § 3, and this was what persuaded the Court. For Jones Act coverage, the plaintiff would have to show that his duties contributed to the vessel's function or mission and that his connection with the vessel was substantial in both nature and duration, citing *Chandris Inc. v. Latsis*, 515 U.S. 347 (1995).

The case was remanded. Presumably a jury when dealing with his status will find he is either a Jones Act seaman or covered by 905(b). The definition of "vessel" would be the same for either claim. Both the Jones Act and 905(b) claim require a vessel, although coverage solely for worker's compensation requires only that the shoreside worker be injured while on navigable waters, not necessarily on a vessel. It could be a platform.

The *Spector v. Norwegian Cruise Lines*, No. 03-1388 case, dealing with the question of whether the Americans with Disability Act applies to passenger ships under foreign flags that call at U.S. ports or operate out of U.S. ports, was argued February 28th. *Spector* involved certain barriers aboard ships affecting disabled passengers.

Punitive Damages

There has been a reduction in punitive damage award in both amounts and in number of awards. National Law Journal 12/21/04.

The U. S. Justice Department reports that the median jury verdict for all torts suits in state courts in 2001 was $37,000.00, down from $62,000.00 in 1991, without factoring in the effect of inflation. Despite talk of runaway juries, the median punitive damage award in 2001 was reported at $50,000.00. New York State Bar Association Journal, February 2005.

Asbestos

Organized labor is pressing the Senate to include a trust fund (of ($140,000,000,000.00) in proposed legislation.

The Jones Act, Unseaworthiness, Maintenance & Cure

Gambling Ships

In line with the *Stewart* case, although preceding it, where a gambling ship is indefinitely moored, there is no Jones Act Claim. *Watson v. Indiana Gaming Co.*, 337 F.Supp.2d 951 (E.D.Ky. 2004).

Jones Act Negligence

A tankerman was injured trying to access a barge in an area not owned, operated or controlled by his employer, and where a safer route existed. No duty to warn was required of either his employer or the owner of the dock area which was under state law. *Bailey v. Seaboard Barge Corp.*, ___F. Supp.___2d, N.Y. Law Journal 3/10/05, S.D.N.Y.

The crew member (2nd Engineer) fell while throwing rope on a tugboat in a lock. There was a question of fact whether the employer was rushing the locking procedure involved and whether there was an improper rope throwing procedure. The plaintiff need only show a little

more than a scintilla of evidence. *Holleran v. Crounse Corp.,* 339 F.Supp.2d 930 (E.D.Ky. 2004).

A seaman was injured when he intervened in a fight between an intoxicated deckhand and his bunkmate. The drunk crew member had escaped from the custody of harbor police, and the captain allowed him back on board. Held: (1) negligence a question of fact against employer (2) vessel was not unseaworthy for mere intoxicated crew member (3) employer not vicariously liable for negligence of harbor police. *Hasty v. Trans Atlas Boats, Inc.*, 389 F.3d 510 (5th Cir. 2004).

Jones Act—Pennsylvania Rule

The First Circuit has held that to apply the Pennsylvania Rule, the safety violation must be causally related to the casualty. The burden will not be shifted to the defendant until the causal link is established. An unseaworthiness claim requires a showing of proximate cause. The Jones Act burden of proving causation is featherweight. Here a fishing boat was lost with the captain. A summary judgment for the owner was affirmed. *Poulis-Minott v. Smith*, 388 F.3d 354 (1st Cir. 2004), which we also discussed in our Formal Report of November 11, 2004.

Jones Act/Unseaworthiness

The plaintiff was injured when a block of frozen meat that he had stowed fell on his foot. The court held that a Jones Act plaintiff need only show the slightest liability and a relaxed standard of causation. The unseaworthiness standard is more demanding, and fact question arose as to small size of freezer. The "primary duty rule" would not apply to the plaintiff, a chief steward, as opposed to a captain. *Long v. U.S.,* 339 F.Supp.2d 729 (E.D.Va. 2004).

Third-Party Death Actions by
Jones Act Seaman's Next of Kin

Where a seaman died through many years of inhaling silica from sand blasting machinery, a maritime products case lies. However, the Jones Act would not allow nonpecuniary damages against a third party. *Scarborough v. Clemco Industries*, 391 F.3d 660 (5th Cir. 2004).

Sieracki Seaman

Radut was a marine corrosion specialist and was aboard ship on a voyage to perform a survey. He was not a member of the crew and was listed

as a "supernumerary". The court held that he was doing seamen's work and was entitled to claim unseaworthiness when he was injured. He was limited to the equivalent of a Jones Act recovery thus denying his wife's loss of consortium and his claim for punitive damages. *Radut v. State St. Bank & Trust*, 2004 WL 2480467 (S.D.N.Y. 2004).

Maintenance and Cure

All circuits except the Third Circuit look to the Collective Bargaining Agreement (CBA) to determine the amount of maintenance and what medical record triggers the duty to pay. *Ammar v. U.S.,* 342 F.3d 133, (2d Cir. 2003). In *Marcic v. Reinauer Transport Companies*, 397 F.3d 120 (2d Cir. 2005), the union agreement in force stated that $15 per day was to be paid as a "minimum". The court allowed a larger sum to be required. The CBA also triggered payment on presentation of a medical not fit for duty certificate. The burden then shifts to the employer.

A seaman reached maximum cure when she was diagnosed with multiple sclerosis and would not recover. A later depression was not compensable. *Whitman v. Miles*, 387 F.3d 68 (1st Cir. 2004).

A crew member cannot make a double recovery where following trial he/she claims maintenance and unearned wages, i.e., wages due until the end of the voyage. *Caron v. Otonka, Inc*., 344 F.Supp. 2d 765 (D.Me. 2004). Here the jury verdict included recovery for lost wages.

Longshore 905(b) Actions

A fact issue existed as to whether inconsistent height of archways could be considered a dangerous condition or hazard that the owner should correct. This could be a violation of the turnover duty. *Prinski v. Blue Star Line Marine,* 341 F.Supp.2d 511 (E.D.Pa. 2004), citing *Kirsch v. Plovidba*, 971 F.2d 1026, 1029 (3d Cir. 1992). The case was tried to a jury in late January 2005, and the jury returned a verdict for the shipowner. It is on appeal.

An injured barge breaker sued the vessel owner, and the vessel owner filed a petition to limit liability. The court held that the owner did not have an active control duty or duty to intervene. Also, a letter of representation does not trigger the six-month period when it simply notifies the vessel owner that the attorney represents the claimant in connection with an injury that occurred on a specific date during the course of his employment. The letter did not refer to a particular vessel or give any indication of the

amount of the damages. In addition, the court discusses its lack of admiralty jurisdiction over a "dead ship" that has been permanently taken out of service. *In re Wepfer Marine, Inc.,* 344 F.Supp. 2d 1130 (W.D.Tenn. 2004). But see *Paradise Divers v. Upmal*, infra.

A radio technician was aboard to survey a ship's radios. He was injured. He was covered by LHWCA and could not sue for unseaworthiness. His 905(b) action failed. *Anastasiou v. M/T World Trust*, 338 F.Supp.2d 406 (E.D.N.Y. 1004). He was the sole employee of his own company. The failure to have non-skid paint on a wet ramp was held not actionable.

Suits v. U.S.

The discretionary function test is applicable to the Public Vessels Act. Here a Coast Guard vessel acted to protect an exclusionary zone. *Woodyer v. U.S.*, 334 F.Supp.2d 1263 (W.D.Wash. 2004).

Maritime claims against the U.S. cannot be brought under the Federal Torts Claim Act. *Taghadomi v. U.S.*, 401 F.3d 1080, 2005 A.M.C. 958 (9th Cir. 2005). There is a two-year statute of limitations under the Public Vessels Act and Suits in Admiralty Act; claim dismissed

Death on the High Seas Act

Here is another case deciding that DOHSA will apply in foreign waters. *Beckett v. Mastercraft Boat Co.*, 126 Cal. App. 1045, 24 Cal. Rptr. 409 (Cal.Ct.App. 2005). Various cases are discussed. California law would not apply outside of California and DOHSA recoveries are limited to pecuniary damages, here involving the death of a 15 year old girl.

Passenger Cases

The Eleventh Circuit has joined the Ninth to hold that cruise lines are strictly liable for intentional torts committed by crew members against passengers. This would also apply for an intentional tort, a claimed rape committed off the ship during a port call. *Doe v. Celebrity Cruises, Inc.,* 394 F.3d 891, 2005 A.M.C. 214 (11th Cir. 2004).

The plaintiff was injured by an automatic sliding door. An expert could testify as to industry standards and issue of fact existed as to prior similar accidents. *Galentine v. Holland America Line*, 333 F.Supp.2d 991 (W.D.Wash. 2004).

Tickets requiring suit in federal court were upheld, even where without diversity there would be no jury trial. *Schertzer v. Carnival Lines*, 2004 A.M.C. 2323 compare: *Linda Reynolds Naughton v. Norwegian Cruise Line*, 386 F.3d 1(1st Cir. 2004).

Limitation of Liability

A single claimant was allowed to sue in state court. It was also held that the privity or knowledge of a manager or supervisor, which could be constructive knowledge, is imputed to the owner. *Complaint of Offshore Marine Towing*, 333 F.Supp. 2d 1286 (S.D.Fla. 2004).

A letter from a diver's attorney to his employer was sufficient to trigger the six-month limitation period when it references "tens of thousands of dollars" in unpaid medical bills and the vessel in question was only worth $50,000.00. The judge who authored the opinion dismissing the limitation complaint (filed within six months of the Jones Act complaint but almost one year from the date of the letter) could not resist noting that the Limitation Act was obsolete, and thus should be strictly construed. The Court found that the letter was clear and unambiguous, and thus the court did not reach the question of whether an ambiguous letter of claim obligates the vessel owner to seek clarification. *In re Paradise Divers, Inc.*, 402 F.3d 1087, 2005 A.M.C. 1063 (11th Cir. 2005), but see: Complaint of *Wepfer Marine*, supra.

An owner/operator was held liable for a fire on a houseboat causing other marina boats damage when he left a heater on and unattended. The finding of negligence made unseaworthiness finding unnecessary. *Hartley v. St. Paul Fire & Marine Ins., Co.*, 118 Fed.Appx. 914 (6th Cir. 2004).

A group of teenagers went aboard a pleasure boat, found the key, and went on a joy ride. One was injured. The court held there was no duty owed to a person aboard a vessel for purposes inimical to the owner's interests. An insurer was granted summary judgment in a declaratory judgment action. *Clementi v. Commercial Union Ins. Co.*, 92 Fed.Appx. 826 (2d Cir. 2004). In the limitation action the owner was granted exoneration.

The claimant's decedent drowned during the bunkering of a dredge, and the claimant filed suit in state court against the owners of both the refueling vessel and the dredge. The owner of the refueling vessel filed a limitation action in federal court, and claims were filed by the claimant and the owner of the dredge. Cross-claims were also filed among the parties.

The limitation plaintiff ultimately settled with the claimant, and then sought to have the cross-clam against it dismissed, arguing that the settlement extinguished any claim against it by the dredge owner for contribution or indemnity. The district court agreed, holding that the remaining defendant would only be liable for its proportionate fault, and therefore had no claim over against the settling defendant. The only exception to this rule arises if some theory exists whereby the non-settling defendant could be held vicariously liable for the settling defendant's fault. This situation did not exist in this case, and the limitation action was dismissed and the stay was lifted to allow the claimant to proceed against the non-settling defendant in state court. *Martin K. Eby Construction Co., Inc.*, 2004 A.M.C. 92 (M.D.Fla. 2003).

Corporate employers of injured harbor worker were not entitled to have their liability determined in limitation action once the limitation plaintiff, who owned the leased barge, was exonerated from liability. The district court therefore refused to decide that the employers' motion for summary judgment, which was filed simultaneously with the vessel owner's motion, and sent the remaining parties back to state court to determine the employer's liability. *In re James Miller Marine Service, Inc.*, 2003 A.M.C. 1777 (S.D.N.Y. 2003).

The owner of a pleasure boat was exonerated from liability for death of passengers (his son and a friend) caused by rough seas, despite the fact that the boat owner had failed to check any weather reports prior to departure. The court found that the claimant did not meet his burden of proving that the owner was negligent in the operation of the vessel. The opinion also contains interesting evidentiary questions with respect to the admissibility of out-of-court statements by decedent and his mother. *In re Cornfield,* 365 F. Supp. 2d 271, 2005 A.M.C. 201 (E.D.N.Y. 2004).

Dram Shop Cases

California district courts have applied state dram shop law. *Voillat v. Red and White Fleet*, 2004 U.S. Dist. Lexis 154359 (2004).

Forum Non Conveniens

A choice of forum clause in a Jones Act employment contract was held to be unenforceable by Judge Kent in *Boutte v. Cenac Towing Inc.*, 346 F.Supp. 2d 922 (S.D.Tex. 2004). Cited was an FELA case, *Boyd v. Grand Trunk Western R.R. Co.*, 338 U.S. 263 (1949). Cases pro and con are discussed in *Boutte*. The *Boutte* case also held that venue provisions of the Jones Act do not apply if the case is brought in admiralty.

Plaintiff, a resident and citizen of Nicaragua, instituted a state court Jones Act suit against a Florida corporation for an accident that occurred in Nicaragua. It was dismissed on grounds of *forum non conveniens*. Suit was then instituted in federal court, which held that it was not *res judicata* except on legal and factual issues determined in the state court. The factors to be considered in a federal court analysis were different. The district court then concluded that Nicaragua provided an adequate forum. *Callasso v. Morton & Co.*, 324 F.Supp.2d 1320 (S.D.Fla. 2004).

Some courts distinguish between a permissive forum selection clause and a mandatory clause. *Wai v. Rainbow Holdings*, 315 F.Supp.2d 1201 (S.D.Fla. 2004) held ambiguity in the collective bargaining agreement and denied defendant's motion to dismiss.

Enforcement of an Arbitration Clause

The Fifth Circuit has also upheld enforcement of an arbitration clause in a seaman's employment contract. *Freudensprung v. Offshore Technical Services*, 379 F.3d 327 (5th Cir., 2004). Both parties were U.S. citizens; Freudensprung was working in Nigerian waters.

The Eleventh Circuit held cruise ship employees to an arbitration agreement covering Filipino crew members. This was despite an explosion while the ship was in a U.S. port. The court cited the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards and U.S. implementing legislation. *Bautista v. Star Cruises*, 396 F.3d 1289, 2005 A.M.C. 372 (11th Cir. 2005).

Procedure

The Third Circuit in an unpublished opinion denied an interlocutory appeal in admiralty, holding that this appeal would lie only from a determination of liability. In *Estate of Hager v. Laurelton Welding Service*, 124 Fed. Appx. 104 (3d Cir. 2005), the appeal was from a ruling that the Death on the High Seas Act applied to crewmembers who died in a boat sinking and that consequently non-pecuniary damages were not recoverable.

CMI Survey on Fair Treatment of Seafarers

This committee was asked to and did reply to a questionnaire by the Comité Maritime International on how U.S. Courts respond to treatment of seafarers after a pollution investigation. Jack Scalia, who is very conversant with the subject, led the team for the report, which included Douglas

Stevenson of the Seaman's Church Institute, Frank Gonynor of Houston, and Paul Edelman of New York.

I would like to thank Paul Edelman, Esq. and Lisa Reeves, Esq. for helping prepare this formal report. We are always looking for additional and interesting projects, relevant decisions, and are also continuously seeking potential new members.

Respectfully submitted,
John P. Schaffer, Chair

FORMAL REPORT OF THE COMMITTEE ON OFFSHORE INDUSTRIES

The Chair Grady Hurley of New Orleans called the Committee meeting to order at 3:45 p.m.

Chair Hurley reported that since our last meeting, other organizations had the following meetings:

The ABA House of Delegates met and did not discuss any maritime related issues.

The Tulane Admiralty Law Institute ("ALI") had its symposium entitled "The Uniqueness of Admiralty and Maritime Law" on March 16–18, 2005 at Tulane University. The ALI has requested suggested topics for future symposiums. Mr. Hurley suggested that our Committee propose offshore related topics for their next symposium. Hal Watson of Houston volunteered to coordinate with Tom Wagner of New Orleans, Ivan Rodriguez of New Orleans, and Michael Bell of Houston to develop suggested topics and they will give a preliminary report at the Fall 2005 Meeting in Arizona.

The GSPEC meeting held in New Orleans discussed deep water drilling and deep drilling in shallow waters to enable production in older fields.

The Offshore Marine Service Association (OMSA) met in April, 2005 and discussed: 1) A recent case upholding a passenger boarding agreement entitled *Johnson v. Seacor Marine Corp.*; 2) The inspection of offshore vessels by the U.S. Coast Guard; and 3) the safe Gulf initiative.

The Fifth Circuit Judicial Conference met in New Orleans. The only maritime case pending before the U.S. Supreme Court is a Fifth Circuit case

entitled *Spector v. Norwegian Cruise Lines*, in which the Fifth Circuit held the ADA Title 3 did not apply to a foreign cruise line ship. Also, e-discovery was discussed, including the scope of documents that may be produced, the cost of producing documents and potential spoliation claims.

Professor Michael Sturley of the University of Texas gave a presentation on the recent United States Supreme Court case entitled *Stewart v. Dutra Construction* and the impact of the decision on the definition of a vessel. Professor Sturley participated in the preparation of the writ to the Supreme Court. He believes the Supreme Court gave the broadest possible definition of a vessel. Under the decision, it is clear that jack-up rigs will be vessels. The Court gave specific examples of what are and are not vessels based on past cases. Transportation is an essential part of the purpose of a vessel even if it is in one place for a long period of time. There was a general question and answer session regarding what may or may not be a vessel in the future, such as whether a floating production storage offloading facility will be considered a vessel.

Newsletter

The Committee published its first newsletter called "Offshore Observations" in the winter 2005. A Newsletter sub-group will be formed get members actively involved by contributing case summaries and recent developments.

Membership

MLA members can now self appoint themselves to a committee through a request submitted to the President. The website is still under construction to allow the self appointments online.

Subcommittees

Frank Allen has been appointed by President Tom Rue to Chair our Subcommittee on Membership.

At the Fall 2005 Meeting there will further discussions about formation of additional Subcommittees, including a Subcommittee on Oilfield Indemnity.

New Business

Charles "Chuck" Lane, Senior Counsel for Halliburton in New Orleans, gave an update on red letter clauses contained in offshore work orders. In

a recent Louisiana State Court case, *Commonwealth Insurance Companies, et al v. Halliburton Energy Services, Inc.,* 899 So.2d 24 (La. App. 1st Cir. 2004), the Court followed the ruling in the U.S. Fifth Circuit Court of Appeal case of *Houston Exploration Co. v. Halliburton,* 359 Fed.3d 777 (5th Cir. 2004), confirming that a "company man" has authority to bind his principles to an indemnity agreement.

Vessel Boarding Agreements

Ryan Acomb reported on the recent decision in *Johnson v. Seacor,* 404 F.3d 871, 2005 A.M.C. 998 (5th Cir. 2005), in which the U.S. Fifth Circuit upheld a vessel boarding agreement between the vessel owner and third party. Seacor had a charter agreement with the oil company to provide transportation for the oil company and its subcontractor's employees. Seacor knew it would have to provide transportation to PMI employees. Seacor contacted PMI directly and got PMI to sign a vessel boarding and indemnity that required PMI to name Seacor as an additional insured under PMI's CGL policy. The court held that the passenger boarding agreement was valid since there was an exchange of promises constituting consideration. The agreement gave PMI a legally enforceable right to board Seacor's vessels. The agreement was a maritime contract, so the Louisiana oilfield and indemnity act was not applicable. However, on the additional insured issue, the court found that PMI's insurance with Gray Insurance Company contained a valid watercraft exclusion that plainly excluding coverage to Seacor.

Respectfully submitted,
Grady S. Hurley, Chair

FORMAL REPORT OF THE COMMITTEE ON REGULATION OF VESSEL OPERATIONS

The biannual meeting of the Committee on Regulation of Vessel Operations, Safety, Security and Navigation took place on May 4, 2005, beginning at 4:00 p.m. at the offices of Holland & Knight LLP, 195 Broadway, New York, NY. The Committee meeting was conducted by Chair Dennis Bryant with Vice-Chair Tony Whitman and Secretary Jeffrey Moller in attendance, along with 45 other Committee members, MLA members, or guests.

Attendees were asked to indicate whether or not they were currently a Committee member or desired to be. Liaisons to the Committee from the MLA's Executive Board indicated that the procedure for joining the various

MLA standing committees has been streamlined and that formal application procedures are no longer in effect. The attendees were told to indicate on the sign-in sheet whether or not they were currently a member of the Committee and, if not, whether or not they desired to be. It was explained that members could join as many as three Standing Committees at any one time in addition to the Young Lawyers Committee.

One of the first items under discussion was the prospective amendment of the Committee's name. Chair Bryant suggested that it merely be shortened, feeling that "Regulation of Vessel Operations" covered the entire necessary spectrum. The members in attendance unanimously agreed. The members of the MLA Board of Directors in attendance, including Phil Berns and Jim Bartlett, were duly informed.

Owing to the substantial commuting distance from the meeting of the Committee on Marine Ecology, several members and presenters were late in arriving. A shuffling of the written agenda was required. Mr. Richard Lorr, representative of the General Counsel for the Maritime Administration ("MARAD"), agreed to proceed out of turn.

Mr. Lorr first discussed the fact that the Title XI Vessel Financing Guarantee Program administered by MARAD is, despite the failure of the current administration to request additional appropriations, alive and well. MARAD has recently approved two deals in excess of $140M, plus a supplement to an existing deal and a smaller issue for Vane Bros., which is constructing two double hull tank barges.

MARAD is involved in a major financing workout involving a local New York ferry operator and has been successful in obtaining a substitute operator. Mr. Lorr also spoke of the situation involving the Fall River (Massachusetts) shipyard, in which certain members of Congress had ordered MARAD to become involved with in order to attempt to revive the yard and save jobs. After an appropriate study, it was determined that continued use of the shipyard would be economically unavailing and the property was sold to a developer who did not intend to continue building ships. This sale had been challenged by a bidder, which, though offering the lowest amount of money, had promised to revive the yard. The nature of the challenge was that the successful bid had been nonconforming, but MARAD had already decided that the revival of the yard was economically unfeasible.

MARAD has also been involved to a certain degree with the Enron and American Commercial Line bankruptcies.

Mr. Lorr spoke at some length with regard to the Maritime Security Program contracts by which MARAD pays vessel owners who are making their vessels available for national defense use when needed. All 60 available contracts have been awarded. Some have been challenged, with allegations that procurement rules were not followed. Those challenges have been turned aside, however, because the MSP did not require the application of the RFP. If any member has questions about the Maritime Security Program, they can contact MARAD attorney Larry Blume.

MARAD has also been involved in the review and licensing of prospective deepwater LNG terminals. Of the three licenses issued to date, one of the terminals (the Gulf Gateway Energy Bridge) is actually up and running.

Finally, the longstanding issue of the scrapping of Ready Reserve Fleet vessels was discussed. Although MARAD is required now to scrap its vessels in environmentally sensitive ways, which costs substantial monies, Congress has yet to appropriate sufficient monies. Apparently, there is a certified ship scrapping facility in Sparrows Point, the old Bethlehem Steel Yard in Baltimore. There are seven scrapping facilities in the United States, but they are lacking business because of the cost.

On behalf of the Federal Maritime Commission, Chief Counsel Amy Larson delivered a report. She indicated that in January 2005, the Commission issued a new rule allowing non-vessel operating carriers to enter into so-called "NVOCC Service Arrangements" or NSAs. These arrangements, rather than contracts or agreements, allow NVOCCs to make confidential deals with their customers outside of their tariffs. There are certain restrictions in the rules, namely that an NVOCC cannot be a shipper and cannot make offers in combination with other NVOCCs, given antitrust problems. Ms. Lawson indicated that the Commission has discontinued its proceedings against China Shipping, having determined that the restrictive competition problems in China have been properly dealt with.

Chair Bryant indicated that Joe Ahern, formerly of the Coast Guard, has retired and is now the Deputy Chief Counsel for the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA). Unfortunately, Mr. Ahern could not be with us to report.

The next presenter was Bruce Paulsen, Chair of the Maritime Security Subcommittee. Mr. Paulsen polled the attendees asking them what kind of lawyering work was being done with respect to maritime security issues, and what should the Maritime Security Subcommittee be doing in terms of

projects. This spawned a number of contributions and interjections from people around the table. For example, Lucien Bulow, an active member of the Society of Maritime Arbitrators, indicated that there have been a number of charter party disputes handled in arbitration in which the issue was the payment for delays encountered as a result of Coast Guard security inspections or implementation of the vessel or facility security plan.

Skip Volkle, of Maritrans, indicated that security issues have indeed been the subject of charter party negotiations. In addition, he said that certain facilities that his company's vessels visit were demanding that vessel owners indemnify the facility in the event that damage was caused by terrorist attack. Maritrans was taking the position that if any charterer sent a vessel to such a facility, such would be a breach of the charter party's warranty of safe berth. Doug Stevenson of the Seamen's Church Institute discussed the problems associated with seafarers not being allowed to depart their ships onto the facilities and the fact that certain facilities were charging escort fees to any visitor amounting to hundreds of dollars. Other attendees suggested that there are problems associated with the extraordinary cost of repatriating stowaways who boarded the vessel in ports that were not signatories to the ISPS Code. There was also discussion of the fact that certain guards put aboard vessels or at facilities were armed with weapons. The question was whether or not such guards were expected to use deadly force in dealing with suspected terrorists. There were also problems with respect to trying to figure out which of the various agencies is supposed to be dealing with which kind of security issues. The newly defined and overlapping responsibilities of the former Customs and Immigration Departments make it difficult to figure which is supposed to be doing what. Finally, Frank Wiswall, the long-standing representative of the MLA to the CMI, indicated that there were certain international working groups dealing with issues of piracy and criminal acts on ships which would soon be seeking input from the MLA of the United States. Those inquiries are most probably going to be directed to our Maritime Security Subcommittee.

Captain William D. Baumgartner of the U.S. Coast Guard (G-LMI) began his presentation by addressing one of the questions that arose during the course of the discussion on maritime security. He indicated that armed guards do not have the authority to stop anyone from boarding or departing a ship and have no federal or state law enforcement authority whatsoever. They are intended merely to be a visible deterrent. Their job under the security plan is to alert appropriate shore-side law enforcement authorities. Their weapons are not intended to be used, except in self-defense.

As to developments in the International Maritime Organization ("IMO"), Captain Baumgartner indicated that he had just returned from the Legal Committee meeting, at which were reviewed draft protocols to amend the International Convention for the Suppression of Unlawful Acts against the Safety of Navigation (SUA Convention). New amendments to the SUA Convention under discussion pertain to weapons of mass destruction, dual use cargoes, and transportation of fugitives. There was also a discussion pertaining to comprehensive boarding regimen dealing with how the port state can get permission from the flag state to board a vessel. There is a draft Wreck Removal Convention in play intending to fill certain gaps in the existing law, such as assigning liability when a vessel in a coastal state's exclusive economic zone and presents a hazard to navigation. There is also discussion at IMO pertaining to the Athens Convention on passenger injury and luggage.

In response to a question by Chair Bryant, Captain Baumgartner gave an update pertaining to vessel response plans for non-tank vessels. It is a prickly issue from a regulatory point of view, because the statute that required these response plans specified that they were to be submitted to the Coast Guard within one year from the passage of the act, but one year was not enough time to issue regulations prescribing the contents of the plan. The Coast Guard has attempted to deal with the issue by issuing a NVIC describing a model plan. However, as is well known, NVICs do not have the force of regulations and cannot be enforced as such. Reading between the lines, the operators of non-tank vessels that are over 400 registered tons would be wise to follow the outline of the NVIC, whether it has regulatory force or not, in submitting their plans. The August 25, 2005 deadline cannot be changed without legislative amendment.

On the topic of the pending lawsuit between the Coast Guard and the Commonwealth of Massachusetts, Captain Baumgartner indicated that the Commonwealth of Massachusetts has answered the complaint with blanket denials and even filed a counterclaim. The Massachusetts statute looks very similar to the Washington statute that was the subject of the *Locke* decision and the doctrines of both "field" and "conflict" preemption are very much in play. The Coast Guard is optimistic that the Massachusetts statute is going to be knocked out in a decision similar to *Locke*. The counterclaim pertains to the fact the Coast Guard has been "delinquent" in issuing regulations for mandatory two hour drug test. (The problem with the mandatory two-hour drug test is that it often conflicts with immediate operational needs for crew members to deal with a vessel casualty situation.) Certain

parties have sought intervention in the lawsuit on behalf of one side or the other. AWO, Intertanko and BIMCO have all sought intervention in order to support the Federal Government. Certain environmental groups have sought intervention in order to support Massachusetts. In a parallel development, the Coast Guard has issued an Advance Notice of Proposed Rulemaking to institute regulations that were deemed advisable following the Buzzard's Bay oil spill, which had inspired the Massachusetts statute. (Such regulations will further strengthen the preemption argument.)

The next presenter on the agenda was William Storz of the Military Sealift Command. Mr. Storz pointed out the fact that Friday, May 7th, was the deadline for the Department of Defense to issue suggestions pertaining to base closures. The expected political outcry is, therefore, on its way.

In regards to pending maritime legislation, Barbara Burke made a very thorough presentation. She made the comment that there is a pending Coast Guard authorization bill that at the moment has no add-on provisions to it.

Giving his report on criminal liability issues, Dave Dickman started by saying that the recent problem of federal sentencing guidelines was a hot topic for the Department of Justice. Despite the fact that the sentencing guidelines are arguably unconstitutional under recent decisions, the Department of Justice continues to insist upon their application. The Attorney General has apparently given an edict that U.S. Attorneys are to report on any judges who depart from the guidelines.

Dave spoke next about the recent settlement that Holland America Line entered into with the Justice Department pertaining to sewage discharge in Alaska. Apparently, a $200,000 fine was agreed to be paid plus $1.3M was to be paid to implement a new compliance plan.

One particularly interesting case was that of Evergreen Line in which $25M was agreed to be paid for a violation of the Act to Prevent Pollution from Ships ("APPS," the U.S. legislation to implement the MARPOL requirements.) The Evergreen case involved seven different ships in five different jurisdictions. Some of the money to be paid by Evergreen is to go to certain environmental projects, and each U.S. Attorney had a different pet project.

The case of *U.S. v. Stickle* recently resulted in the conviction of the owner of Sabine Transportation for complicity in the overboard disposal of oil-soaked grain. He received a 33-month sentence. The case is very note-

worthy, because the jury instructions were the first pertaining to APPS. The case is also a lesson on how the Justice Department goes about building a prosecution. In this case they started from the ground up and obtained guilty pleas from the boatswain, various other crewmen, the chief mate and the company president, all of which agreed to testify against the company owner, the prototypical Big Fish.

Finally, the chief officer of a tank vessel was acquitted of a violation of the Maritime Manslaughter statute (18 USC § 1115) arising out of the death of a crewman who had been sent into an empty cargo tank. Interestingly, the judge decided early on that, based upon the broad language of the statute, nothing beyond simple negligence was required to be proven. After this decision, the chief mate decided to plead guilty. However, in a surprise move, the judge reversed himself and decided that gross negligence was necessary. The chief mate retracted his plea and went on to a trial, at which he was acquitted.

With respect to the current status of Coast Guard rules for inspection of towing vessels, Skip Volkle, legal counsel at Maritrans, gave a report. The Coast Guard has issued an Advance Notice of Proposed Rulemaking submitting questions to industry as to how the rules should be modeled. The Coast Guard first asked whether or not a full vessel inspection regime similar to that already in place for other vessels be used. The industry unanimously said that a more flexible system such as a Safety Management System be put in place. Apparently, the Notice of Proposed Rulemaking is expected to be issued in the fall of 2005.

Chair Bryant addressed the final subjects. As to ballast water management, Congressional activity is completed, and there is now a federal scheme in place, the IMO convention on the subject is out for signature, and the state law in California has recently been expanded. One interesting development is that a federal judge in the Northern District of California recently ruled in a lawsuit brought against the EPA that EPA's broad waiver for operating vessels and the environmental discharges they allow is unlawful. The immediate effect of the ruling is that discharging ballast water will require a permit issued under the National Pollution Discharge Elimination System (NPDES). Not only does the decision ignore the previously enacted federal statute, but the problem is that the decision is much more broad than it needed to be and tosses the waiver out, as it pertains to all other kinds of routine discharges, including those from the stern tube and the sea chest. The case pends further action and possible appeal by the EPA.

As to Title 46 codification, it is expected that the bill will pass in this Congress. The bill should be quickly reported out of the House Judiciary Committee and should face no obstacles. This is largely due to the fact that all agree that no substantive amendment of the law was intended.

Respectfully submitted,
Dennis L. Bryant, Chair

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

Held in the Jones Room, 52nd Floor
Jones, Walker, Waechter, Poitevent, Carrere & Denegre
201 S. Charles Avenue
New Orleans, Louisiana
on
March 15, 2005
9:30 a.m.

The March 15, 2005 meeting was called to order by President Thomas S. Rue at 09:40 a.m. In addition to President Rue, the following officers also were present:

Lizabeth l. Burrell, First Vice President
Warren J. Marwedel, Second Vice President
James W. Bartlett, III, Secretary
Patrick J. Bonner, Treasurer
Philip A. Berns, Membership Secretary
Raymond P. Hayden, Immediate Past President

The following directors also were present:

Robert G. Clyne
Christopher O. Davis
Robert S. Glenn, Jr.
Glenn G. Goodier
Robert J. Gruendel
Sandra L. Knapp
Edward L. Lebreton, III
Richard M. Leslie
Harold K. Watson
M. Hamilton Whitman, Jr.

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the November 12, 2004 meeting were unanimously approved and accepted. The minutes of the November 12, 2004 meeting of the board of directors will be published in the fall 2004 issue of the PROCEEDINGS.

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ended October 27, 2004. He reported that as

of October 27, 2004, the MLA had cash and investments of approximately $228,000, which is up by over $50,000 from the same date last year. He attributed the improved reserve position to increased use of emails, less printing costs, and less travel expenses. In addition, the decision to delay printing of the MLA directory resulted in a savings.

Dues collections are strong, with approximately 89 percent of billed dues collected.

Upon motion duly made and seconded, the Treasurer's Report was unanimously approved and accepted. A copy of the treasurer's formal written report for the three months ended October 27, 2004 will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns of San Francisco recommended the admission of 15 lawyers nominated for associate membership. Upon a motion duly made and seconded, the applications of the following 15 Associate members were approved:

Matthew John Bauer of New Orleans, Louisiana
Wiley Richmond Beevers of Arlington, Virginia
Samuel C. Coluzzi of New York, New York
Eileen M. Gorman of Washington, D.C.
Catalina Guillen of New Orleans, Louisiana
David C. Hannan of Mobile, Alabama
Lisa M. Houlihan of Alameda, California
I. Ray Kerlick of Houston, Texas
Carmen Victoria Markakis of New York, New York
Patrick J. McStravick of Philadelphia, Pennsylvania
Chris Parker Reilly of Juneau, Alaska
Adam P. Samansky of Boston, Massachusetts
Steven L. Snell of Baltimore, Maryland
Susan L. Stevens of New York, New York
Justin S. Walker of Philadelphia, Pennsylvania

Mr. Berns also reported that a former Associate member, Gregg A. Cervi of Washington, D.C. had applied for reinstatement. Upon motion duly made and seconded, the reinstatement of Gregg A. Cervi as an Associate member was approved.

President Rue reported that he had extended invitations for Judicial memberships to the Honorable Raymond A. Jackson of the United States District Court for the Eastern District of Virginia and Robert S. Lasnik of the United States District Court for the Western District of Washington. After motion duly made and seconded, Judge Jackson and Judge Lasnik were approved as Judicial members.

Mr. Berns regretfully reported the deaths of the following MLA members:

Alexander E. Rugani of New York, New York
John S. Osborne of New York, New York
John J. Martin of Merrick, New York
Gordon L. Poole of San Francisco, California

After the admission of the 15 new Associate members, the reinstatement of Gregg Cervi, and the admission of Judges Jackson and Lasnik as Judicial members, the total membership of the MLA is 3135.

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

DISCUSSION ITEMS AND REPORTS

Title 46 Codification

President Rue reported that the legislation relating to the codification of Title 46 of the United States Code was not enacted last year by the 108th Congress. Dennis Bryant, Chair of the MLA *Ad Hoc* Committee on the Title 46 Codification, was asked to suggest any final changes to the proposed legislation. He circulated the current draft of the proposed legislation to his Committee and provided additional comments. The proposed legislation will be reintroduced in the 109th congress.

MLA Fall Meeting in Scottsdale, Arizona, November 2–6, 2005

The Fall Meeting of the MLA will be held at the Fairmont Princess Resort in Scottsdale, Arizona on November 2–6, 2005. It is expected that materials relating to this meeting will be distributed to the membership shortly.

UNCITRAL

President Rue reported that he had received a report from Chester D. Hooper that certain countries, specifically the United Kingdom, the Netherlands, and Greece, are attempting to have UNCITRAL adopt complete contractual choice of law relating to the proposed carriage of goods convention. It is the position of the MLA that the convention should preserve cargo's right to choose between the law of the place of origin, the place of destination, the principal place of business of the carrier, or the forum chosen in the contract for arbitration of the dispute.

Comité Maritime International

President Rue reported that the next meeting of the CMI would be held in Paris in April. President Rue and First Vice-President Burrell will attend on behalf of the MLA. Frank L. Wiswall, Jr. of Castine, Maine will be retiring as Vice-President of the Executive Council. Christopher O. Davis of New Orleans has been nominated to be a Councilor on the Executive Council of the CMI and also will be attending the Paris meeting.

Hague Convention

President Rue reported that Alan Van Praag, who has been monitoring the Hague Convention regarding the enforceability of choice-of-law and forum selection clauses in commercial contracts on behalf of the MLA, will attend a U.S. State Department Advisory Committee meeting in Washington, D.C. on May 9, 2005 relating to this convention.

MLA Website

Treasurer Bonner reported that a project to upgrade and improve the MLA website has been approved, and this project will begin in April and take approximately two months to complete.

BIMCO and Argentine MLA Centenaries

President Rue reported that BIMCO and the Argentine MLA are celebrating their centenaries in 2005. A motion was made and duly seconded that the MLA issue resolutions to those organizations congratulating them on these events.

Fisheries Committee

President Rue reported that an objection had been received from an MLA member relating to the two resolutions proposed by the Fisheries Committee and approved by the MLA at its November 13, 2004 General Meeting. President Rue will send a response to this letter.

2006 Fall Meeting

The Board of Directors is exploring the possibility of holding the 2006 Fall Meeting of the MLA in a city other than New York, perhaps San Francisco. The officers and directors will communicate with the various San Francisco maritime law firms and the Pacific Admiralty Seminar and will look into various venues for a San Francisco meeting. This subject will then be addressed at the May 5, 2005 meeting of the Board of Directors.

Special *Ad Hoc* Committee on Enhancing MLA Membership and Participation

First Vice-President Burrell, Chair of the Special Committee, provided the Board of Directors with the fifth report of the Special Committee. Among other recommendations, the Special Committee suggested the creation of Subcommittees of the Board of Directors to manage certain responsibilities of the board, so as to enhance the responsibilities and participation of board members in MLA management functions.

Law Student Section

The Board of Directors discussed the suggestion that the MLA should form a law student section, with the opinions on this subject varying widely. President Rue suggested that a conscious effort be undertaken to discuss this subject with admiralty law professors. President Rue asked that the members of the Board of Directors provide him written proposals on this subject by April 10, 2005.

Presidential Activities

President Rue reported that he has attended or will be attending the following meetings or events:

A. American Club Luncheon, March 10, 2005.
B. Tulane Admiralty Law Institute, March 16-18, 2005.

C. Comité Maritime International Meeting, Paris, April 16, 2005.
D. International Maritime Organization Meeting, London, April 25-29, 2005.
E. Average Adjusters Association Meeting and Dinner, London, May 12, 2005.
F. SEALI Seminar, June 24, 2005.

Future Officer and Board Meetings

A. MLA Spring Meeting, New York, Officers Meeting (May 4, 2005), Board of Directors Meeting (May 5, 2005), and General Meeting (May 6, 2005).
B. Officers' Meeting and Board of Directors Meeting at Chateau Montebello, Québec, Canada, August 18-20, 2005.

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

Respectfully Submitted,
James W. Bartlett, III, Secretary

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

Held in the Hughes Room
Association of the Bar of the City of New York
44 West 44th Street
New York, New York 10036
on
May 5, 2005
9:30 a.m.

The May 5, 2005 meeting was called to order by President Thomas S. Rue at 09:30 a.m. In addition to President Rue, the following officers also were present:

Lizabeth L. Burrell, First Vice President
Warren J. Marwedel, Second Vice President
James W. Bartlett, III, Secretary
Patrick J. Bonner, Treasurer
Philip A. Berns, Membership Secretary
Raymond P. Hayden, Immediate Past President

The following directors also were present:

Robert G. Clyne
Christopher O. Davis
Robert S. Glenn, Jr.
Glenn G. Goodier
Robert J. Gruendel
Sandra L. Knapp
Edward L. Lebreton, III
Richard M. Leslie
Harold K. Watson
M. Hamilton Whitman, Jr.
John M. Woods

At the invitation of President Rue, John A. Edginton of Point Richmond, California, and Marion E. McDaniel, Jr. of Houston, Texas, also attended the meeting. Also attending the meeting at President Rue's request were Douglas R. Petko and Robin Becker of PC Solutions.

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the March 15, 2005 meeting were unanimously approved and accepted. The minutes of

the March 15, 2005 meeting of the Board of Directors will be published in the spring 2005 issue of the PROCEEDINGS.

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ended January 27, 2005. He reported that as of January 27, 2005, the MLA had cash and investments of approximately $235,000, which is an improvement over last year. He attributed the improved reserve position to the success of the Fall 2004 Meeting in New Orleans, decreased travel expenses, reduced printing costs, and the increased use of emails for communications with members.

Dues collections remain strong. In terms of future expenses, seed money for the Scottsdale meeting in November will be necessary, and the MLA website upgrade is expected to cost approximately $20,000. It is hoped that the improved website will be up and running by mid-June.

Upon motion duly made and seconded, the Treasurer's Report was unanimously approved and accepted. A copy of the Treasurer's formal written report for the three months ended January 27, 2005 will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns of San Francisco reported that nine associate members had been nominated for elevation to proctor membership. Upon motion duly made and seconded, the nominations of the following nine Proctor members were approved:

Dennis L. Bryant of Washington, D.C.
Jana N. Byron of New York, New York
Robert E. Collins of Boston, Massachusetts
John V. Coulter of New York, New York
Michael D. Formby of Honolulu, Hawaii
Donald J. Freeman of West Palm Beach, Florida
J. Patrick Geraghty of Hackensack, New Jersey
Pamela L. Milgrim of New York, New York
Charlotte Valentin of New York, New York

Mr. Berns also recommended the admission of 16 lawyers nominated for Associate membership. Upon a motion duly made and seconded, the applications of the following 16 Associate members were approved:

Adrian E. Malanos Belton of Charleston, South Carolina
James S. Carmichael of Miami, Florida
Ryan Conor Donlon of Pleasonton, California
Douglas Warren Fink of Mobile, Alabama
Curtis W. Fitzgerald, II of Sugarland, Texas
David D. Jensen of New York, New York
Matthew S. Kish of Coral Gables, Florida
Kevin J. Lennon of New York, New York
Bathann R. Lloyd of Pittsburgh, Pennsylvania
Charles J. McCarthy of Cambridge, Massachusetts
Carolyn Elizabeth Meers of New York, New York
Charles P. Neely of Conshohocken, Pennsylvania
Matthew D. Pethybridge of Portsmouth, Virginia
Samuel S. Rufer of Minnapolis, Minnesota
Norman M. Stockman of Mobile, Alabama
James S. Witcher, III of Birmingham, Alabama

Mr. Berns recommended approval of the nomination of the Honorable Paul V. Niemeyer of the United States Court of Appeals for the Fourth Circuit as a Judicial member. Upon motion duly made and seconded, the nomination of the Honorable Paul V. Niemeyer as a Judicial member was approved.

Mr. Berns recommended the approval of the nomination of Professor Jonathan M. Gutoff of the Roger Williams University School of Law as an Academic member. Upon motion duly made and seconded, the nomination of Professor Jonathan M. Gutoff as an Academic member was approved.

Mr. Berns recommended that the position of General Counsel of the National Oceanic and Atmospheric Administration (NOAA) be made an *Ex-Officio* member of the MLA, *i.e.,* whoever holds that post will hold this *Ex-Officio* membership position. The present General Counsel of NOAA is James R. Walpole. Upon motion duly made and seconded, the position of General Counsel of NOAA was approved as an *Ex-Officio* member of the MLA.

Mr. Berns recommended the approval of the nomination of four individuals for Non-Lawyer memberships. Upon motion duly made and seconded, the nominations of the following four Non-Lawyer members were approved:

Brooke Y. Grehan of New Orleans, Louisiana
Christopher Miley of New York, New York
Charles T. Rekerdres of Dallas, Texas
John C. Timmel of Tampa, Florida

Mr. Berns regretfully reported the deaths of the following MLA members:

Ralph E. McKay of Forked River, New Jersey
Felix Saogado, Jr. of New York, New York
E. V. "Gus" Greenwood of Houston, Texas
The Hon. J. Calvitt Clarke, Jr. of Norfolk, Virginia
Wayne F. Emard of San Francisco, California

Mr. Berns also regretfully reported the death of Suzanne Hayden, the wife of former President Raymond P. Hayden.

After the admission of the 16 new Associate members, the Hon. Paul V. Niemeyer as a Judicial member, Jonathan M. Gutoff as an Academic member, four new Non-Lawyer members, and the General Counsel of NOAA (James R. Walpole) as an *Ex-Officio* member, the total membership of the MLA is 3,128.

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

DISCUSSION ITEMS AND REPORTS

Ttle 46 Codification

President Rue reported that Dennis Bryant, Chair of the MLA *Ad Hoc* Committee on the Title 46 Codification, had reported that final suggestions as to changes to the proposed legislation had been submitted. It is hopeful that the Title 46 codification will become law in the 109th Congress.

Comité Maritime International

President Rue and First Vice-President Burrell attended the meeting of the CMI in Paris on April 16, 2005. President Rue reported that Christopher O. Davis of New Orleans has been elected as a Councilor on the Executive Council of the CMI. Frank L. Wiswall, Jr., of Castine, Maine retired as Vice-President of the Executive Council. President Rue will present Mr. Wiswall with a certificate of appreciation at the General Meeting on May 6, 2005. Stuart Heatherington of Australia was elected Vice-President of the Executive Council, replacing Mr. Wiswall.

2005 Fall Meeting

Marion E. McDaniel, Jr. of Houston, Chair of the Arrangements Committee for the 2005 Fall Meeting, reported on the plans for the meeting. The meeting will be held at the Fairmont Princess Resort in Scottsdale, Arizona on November 2–6, 2005. There will be CLE presentations in the mornings of Thursday and Friday, November 3–4, with Committee meetings in the afternoons. The General Meeting will be held on Saturday morning, November 5. There will also be a full program of social, recreational, and sports events.

2006 Fall Meeting

John A. Edginton of Point Richmond, California, reported on plans for a proposed 2006 MLA Fall Meeting in San Francisco, California. A planning Committee has been formed, with Forrest Booth of San Francisco as its Chair. The proposed meeting would be held from Wednesday, October 4, 2006 to Saturday, October 7, 2006 and would be held in conjunction with the Pacific Admiralty Seminar. The Committee is in the process of talking to hotels, restaurants, and venues for events and recreational activities. This meeting would also coincide with Fleet Week in San Francisco. Upon motion duly made and seconded, the board approved the Committee going forward with the planning for a San Francisco meeting.

Hague Convention

Alan Van Praag of New York will attend a U.S. State Department Advisory Committee meeting in Washington on May 9, 2005 relating to the Hague Convention regarding the enforceability of choice-of-law and forum selection clauses in commercial contracts. Mr. Van Praag was authorized by the Board of Directors to take the position that contracts for carriage of goods and passengers at sea should be exempted from the draft convention.

Proposed ABA Resolution On U.S. Oceans Policy

Richard M. Leslie of Miami reported on the status of a draft report and proposed draft resolution on U.S. oceans policy that certain elements in the American Bar Association were proposing for adoption by the ABA. It appears that the draft report and draft resolution had their origin in the ABA Standing Committee on Environmental Law. The draft report and draft resolution came to the attention of the Board by way of a memorandum from David J. Farrell, Jr., Chair of the Fisheries Committee, dated April 22, 2005.

They also in April came to the attention of James K. Carroll of New Orleans, who currently is serving as Chair of the Tort Trial and Insurance Practice Section of the ABA.

Prior to the Board meeting, a resolution had been drafted by which the MLA would request the ABA and its sections to defer consideration of the draft report and draft resolution on U.S. oceans policy until the MLA has had an opportunity to analyze the draft report and draft resolution and to comment on the issues raised therein. Upon motion duly made and seconded, this resolution was adopted by the Board.

Subcommittees of the Board of Directors

Following up on a recommendation made by the Special *Ad Hoc* Committee on Enhancing MLA Membership and Participation, the Board approved the formation of Subcommittees of the Board, which will be the Subcommittee on Membership, the Subcommittee on Finances, and the Subcommittee on Committees. The Board will consider the formation of other Subcommittees.

Retiring Directors

President Rue thanked the following retiring directors for their service on the board and presented them with certificates acknowledging that service:

Robert G. Clyne of New York, New York
Robert S. Glenn, Jr. of Savannah, Georgia
Glenn G. Goodier of New Orleans, Louisiana
Richard M. Leslie of Miami, Florida

In addition, the following Committee Chairs will be stepping down from those positions and will be presented certificates of appreciation:

David J. Farrell, Jr. of South Chatham, Massachusetts—Fisheries Committee

Alfred J. Kuffler of Philadelphia, Pennsylvania – Special Committee on Environmental Crimes

Lawrence Jay Kahn of New York—Young Lawyers Committee

John M. Ryan of Norfolk, Virginia—Stevedoring, Marine Terminal, and Vessel Services Committee

Arbitration and ADR Committee

Robert G. Clyne of New York reported that the Arbitration and ADR Committee had unanimously approved a model mediation agreement and suggested that it might be posted on the MLA website. The Committee will submit the model mediation agreement to President Rue for his review.

Presidential Activities

President Rue reported that he had attended or will be attending the following meetings or events:

A. John R. Brown Moot Court Competition—April 9, 2005.
B. Comité Maritime International Meeting, Paris—April 16, 2005.
C. International Maritime Organization Meeting, London—April 25-29, 2005.
D. Average Adjusters Association Meeting and Dinner, London—May 12, 2005.
E. SEALI Seminar—June 24, 2005.

Future Officer and Board Meetings

A. Officers Meeting and Board of Directors Meeting at Chateau Montebello, Québec, Canada—August 18–20, 2005.
B. MLA Fall Meeting, Scottsdale, Arizona—November 2–6, 2005.

There being no further business to come before the Board of Directors, the meeting was adjourned at 11:55 a.m.

Respectfully Submitted,
James W. Bartlett, III, Secretary