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May 5, 2006

THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

**SPRING MEETING—MAY 5, 2006**

PRESENT:

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

And the following 205 members:

Robert B. Acomb, Jr.	Phillip A. Buhler
Julia M. Adams	Lucienne C. Bulow
Paul B. Arenas	Robert W. Burger
Francis J. Barry, Jr.	Barbara D. Burke
Joseph E. Basenberg	Michael C. Bynane
Wiley Richmond Beevers	Paul E. Calvesbert
Waverley L. Berkley, III	Christopher E. Carey
F. Nash Bilisoly	William E. Cassidy
Richard C. Binzley	Robert G. Clyne
Jorge F. Blasini	Mark T. Coberly
Lawrence B. Brennan	Michael Marks Cohen
James L. Brockmeyer	Timothy J. Conner
Patrick M. Brogan	William R. Connor, III
Philip S. Brooks, Jr.	Cody D. Constable
Julia R. Brouhard	James Patrick Cooney
Charles D. Brown	Michael E. Crowley
Dennis L. Bryant	Blane H. Crutchfield
Christopher D. Buck	John C. Daidola
Richard T. Buckingham	Bruce P. Dalcher

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Edward Dangler  
Christopher O. Davis  
Robert A. Degen  
Frank P. DeGiulio  
Charles G. DeLeo  
Vincent M. DeOrchis  
Christopher H. Dillon  
Charles S. Donovan  
Susan M. Dorgan  
William R. Dorsey, III  
John A. Edginton  
David J. Farrell, Jr.  
Robert B. Fisher, Jr.  
Vincent J. Folio  
Joshua S. Force  
James E. Forde  
Peter F. Frost  
George D. Gabel, Jr.  
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John J. Gallagher  
Erik D. Garza  
G. Beauregard Gelpi  
Gene B. George  
Alexander M. Giles  
Geoffrey J. Ginos  
Robert S. Glenn, Jr.  
Frederick B. Goldsmith  
Andrew J. Goldstein  
Glenn G. Goodier  
William A. Graffam  
Donald C. Greenman  
F. Max Hardberger  
Paul D. Hardy  
Jason R. Harris  
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Eugene F. Hestres  
William Hewig, III  
Ann-Michele G. Higgins  
Julius H. Hines

Bruce R. Hoffer, Jr.  
Seth S. Holbrook  
Chester D. Hooper  
Anne D. Hopkins  
Robert B. Hopkins  
Mary C. Hubbard  
Grady S. Hurley  
Bradley A. Jackson  
Rebecca Jackson  
Stephen B. Johnson  
John Paul Jones  
Kimbley A. Kearney  
Marshall P. Keating  
Allan R. Kelley  
Terrence Kenneally  
John D. Kimball  
Robert L. Klawetter  
Peter Martin Klein  
Sandra L. Knapp  
Jean Knudsen  
Victor I. Koock  
John C. Koster  
Jan. M. Kuylenstierna  
Blake W. Larkin  
J. Dwight LeBlanc, Jr.  
Edward F. LeBreton  
Richard M. Leslie  
Keith B. Letourneau  
Raymond T. Letulle  
Todd D. Lochner  
Herbert M. Lord  
Geoffrey A. Losee  
Henry C. Lucas  
C.E. Lundin  
Marc G. Marling  
Francis J. McLaughlin  
Carmen-Victoria Markakis  
David W. Martowski  
Margaret D. Mathews  
Douglas P. Matthews  
Michael B. McCauley  
Howard M. McCormack  
Marion E. McDaniel, Jr.

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Daniel G. McDermott	Michael J. Ryan
Kevin L. McGee	Robert J. Ryniker
Peter A. McLauchlan	David M. Salentine
Colin McRae	John C. Scalia
James E. Mercante	John P. Schaffer
Dennis Minichello	Christina K. Schovajsa
Jeffrey S. Moller	Gordon D. Schreck
James F. Moseley	Janis G. Schulmeisters
James F. Moseley, Jr.	Benjamin O. Schupp
Walter Muff	David J. Sharpe
Benjamin Allston Moore, Jr.	Louis P. Sheinbaum
Robert W. Mullen	David F. Sipple
Thomas Muzyka	David W. Skeen
Julie A. Nelson	Jeanette G. Smith
Mark E. Newcomb	Steven L. Snell
Francis X. Nolan	Jonathan S. Spencer
David A. Nourse	Douglas B. Stevenson
George W. Nowell	William T. Storz
Cathy O'Connell	Hugh R. Straub
E. Richard Ogrodowski	Michael F. Sturley
Kevin O'Donovan	Norman C. Sullivan, Jr.
Michale D. O'Keefe	Michael L. Swain
Richard W. Palmer	John H. Sweeney
Armand M. Paré, Jr.	Joseph C. Sweeney
Robert B. Parrish	Paul F. Tecklenburg
Nathaniel G.W. Pieper	William Tetley
J. Ridgeley Porter, III	John P. Vayda
Edward J. Powers	David N. Ventker
A. Clay Rankin, III	Kenneth H. Volk
Mary Elisa Reeves	Arthur J. Volkle, Jr.
Charles T. Rekerdres	Harold K. Watson
Stephen V. Rible	William H. Welte
Barbara L. Ristow	James F. Whitehead
J. Ramón Rivera-Morales	Malcolm Williams
William J. Riviere	Andrew C. Wilson
Edwin D. Robb	Frank L. Wiswall
C. Kent Roberts	John M. Woods
Antonio J. Rodriguez	Thomas M. Wynne
Manolo Rodriguez, III	Pamela Zarlingo
Thomas A. Russell	Ahmed Zarnegar
James E. Ryan	Anne Zawitoski
John M. Ryan	

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And the following 7 guests:

Anthony Barker  
Luiz Escorez  
Nigel H. Frawley  
Janosz Kurcharski

Bernard Mathias  
William Moreira  
Ikuko Sano

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**Adjournment**

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THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

SPRING MEETING  
NEW YORK, NEW YORK  
MAY 5, 2006

**PROCEEDINGS**

PRESIDENT RUE: Good morning ladies and gentlemen. Welcome to the spring meeting of the Maritime Law Association of the United States. I will now call the meeting to order.

We do request that you either turn your cell phones off or turn them to the silent mode so that we are not harmonized by the various ring tones that man has devised.

We have several guests this morning that I would like to recognize. I'm not sure all of them have arrived yet. I would like to introduce Rear Admiral John Crowley, Chief of the Ninth Coast Guard District in Cleveland. Will Moreira, President of the Canadian Maritime Law Association. Nigel Frawley, Secretary/Treasurer. He tells me that he has given that up, but he is also the Secretary General of the CMI. Nice to have you, Nigel. Peter Cullen, immediate Past President of the CMI. Professor Bill Tetley from Canada. Bill, it's nice to have you here this morning. Is Julie Nelson here? Julie, would you please stand up. Acting MARAD Administrator. We are awfully glad to have you with us this morning. Is Jim Craig here of AIMU? Marshall Keating, Treasurer Emeritus. Good morning, Marshall. I would also like to introduce to you Doug Petko, on the far wall, and Robin Becker of PC Solutions. These are the individuals who maintain our website and also administer our business for the Association. If you have any questions about the website, you can call one of them. If you call the 1-800 number for the MLA U.S., you will get Robin Becker.

The secretary's report, please, Mr. Bartlett.

MR. BARTLETT: Thank you, Mr. President. I would like to welcome you all to the Cinco de Mayo meeting of the MLA. I learned only this morning that this commemorates the victory of the Mexicans over the French. Enough said about that.

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I would like to remind everyone to sign the sign-in sheets outside the Great Hall. And, speakers, when you come to the microphone, please bring with you your business card to give to the court reporter.

The Board of Directors met twice since our last General Meeting. We met in Miami Beach on March 18th and yesterday morning here in New York. I will briefly report on some of the topics that we discussed at these two meetings, but in many cases there will be reports from others that will go into more detail on those subjects.

President Rue, First Vice President Burrell and Second Vice President Marwedel, as well as director and chair of the International Organizations Committee, Christopher Davis, on February 12th to 15, 2006 attended the CMI Colloquium in Capetown, South Africa. This was a very productive meeting and covered subjects including the fair treatment of seafarers and places of refuge.

You heard, particularly in Scottsdale, from Jim Moseley, Sr. about the ABA Resolutions on Oceans Policy. The MLA currently is seeking to have Robert B. Parrish of Jacksonville appointed as a member of the ABA Standing Committee on the Environment Law, which was the committee that came up with those resolutions.

You will hear today more about the website upgrade. It is now entirely in place. You should have by now received a packet with information concerning that. As I said, you will hear more later. This website upgrade will include, although it does not yet include, a career employment opportunity page.

President Rue has sent a letter to the Academic members of the Association and to admiralty law professors on a listserv maintained by Professor Jones seeking their input on how best to interact with law students interested in admiralty law.

You should have all received by email last month a Schedule of Upcoming Events. It was suggested at our Miami Board meeting that the membership needed more long-range notice of dates and locations of MLA events. That was the first, and this will be a quarterly event. The Secretary will send a quarterly email to the members containing this long-range calendar, so that you can do some long-range planning. As to all of the events listed on that blast, more details will be found in the MLA website for each event.



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One of the subjects discussed was an environmental crimes initiative. This topic was the subject of discussions and presentations at Scottsdale. The MLA is acting as a facilitator bringing together the maritime industry and Government, the Department of Justice and the United States Coast Guard, trying to work out a best practices guideline. Michael Chalos is heading this effort and will be reporting later in this meeting, I believe.

The 2006 Fall Meeting, as I hope all of you are well aware now, will be held in San Francisco on October 3rd through the 7th, and Forrest Booth and John Edginton will be reporting more about that. They made a presentation to the Board at yesterday's meeting, and it looks like a terrific event.

At the Board of Directors luncheon yesterday, President Rue presented now Rear Admiral William Baumgartner with a resolution of appreciation for his service as Chief of the Office of Maritime and International Law.

Since the last general meeting, President Rue, as I said earlier, attended the CMI Colloquium in Capetown, South Africa February 12th through 15th. He also attended and participated in the John R. Brown Moot Court Competition in Houston on April 1st. He also attended the IMO Meeting in London on April 24th through 28th.

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

MR. RUE: Do I hear a second? All in favor, please say, aye. Opposed, no. Motion carries. Mr. Bonner, Treasurer's report.

MR. BONNER: Thank you, Mr. President.

Our finances remain strong. As of May 1st, we had about \$336,000 in the bank. We have paid about \$60,000 in advance for tonight's dinner, and I'm expecting that we will break even or maybe even make a little profit on that. So we are in good shape.

And I was looking at our records and I saw that we were pretty much where we were eight years ago when I assumed this job, and with that in mind I'm getting out of Dodge. Let the next guy worry about it. As I said, we are roughly where we were eight years ago. My successor, whoever he is, whoever you elect today might be a little busy, because I haven't paid any bills in about nine months.

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If you will indulge me, Mr. President, when I took the job, my predecessor, Marshall, said that it was a lousy job. I have to disagree with him, I think it's a great job. I have been practicing law for 28 years, and I have been Treasurer for eight years, and I realize I should have been an accountant.

I mean, when you balance the books, they are either balanced or they are not balanced. It's not like clients calling you up with these tough questions, and you say on the one hand this or on the other hand that. So I love being Treasurer.

When I took the job, Chet Hooper said, "You are going to know everything that's going on in the organization." And he was right.

When I think of this organization, I think of a few adjectives. The first one is as Treasurer you want to avoid all risk. You want things to be the same year after year. Well, forget about it with this group. We thrive on risk.

We start off with a black tie dinner at a museum. Every two years we go to a resort which is either a theme park, in the desert or some hurricane prone area, and it seems like you are doing constantly things to make the Treasurer's job more difficult.

The second adjective I think of is flexibility. We came and the hurricane blew off the roof of a hotel and all of a sudden Bob Parrish has to change everything and go to Boca Raton.

The third adjective is loyalty. We have such loyal members: they came to Boca Raton; after 9/11, when Bill Dorsey and Tony Whitman were pushing people, and nobody was flying in the United States, our members came to California.

And I just hope that we show the same loyalty in this coming March when New Orleans really needs us, and we all will go down to Tulane and support the people in New Orleans.

So this concludes my report. I move its adoption.

MR. RUE: Is there a second? All in favor, please say, aye. Mr. Keating?

MR. KEATING: I did say this was a lousy job when I resigned as Treasurer, but I meant it in a humorous way. The only person who didn't think it was humorous was Pat Bonner.

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I would like to say that Pat has done a remarkably good job, probably better than I could ever have done. I think he should be commended for all these years he put in. He has done an excellent job.

MR. RUE: Let's just say the next Treasurer has a considerably large job to fill. He can reconstitute the coffers in the same fashion Mr. Bonner has. Mr. Berns, membership report.

MR. BERNS: Would it first be in order to make a motion to confirm that Pat did do a better job than Marshall?

MR. RUE: We certainly seem to be slipping in political incorrectness here today, so let's move on.

MR. BERNS: I'm retired from the Government.

The Board met on March 18th in Miami. I went down there to see why they still have windshield wipers going on new cars on a sunny day, but it turns out if the windshield wipers were on when they bought the car, they stayed on.

As of the March 18, 2006 meeting of the Board, we admitted 21 associates and reinstated a former associate member. Total number was 3,078. As of April 17th, as reported by our MLA rep, Robin, who keeps the running records, we were at 3,063. A loss of 15. Variance in numbers is based on a couple of factors. One, of course, is, regretfully, the death of members. Others are resignations or removal for failure to pay dues.

On May 4th, the Board met here in New York, and we had a run on Proctor applications. I think partly it was based on the fact that I said if you apply now for a Proctor certificate and become a Proctor, I will not send you an autographed picture of me. So we had 18 Associate members who have now become proctors, and rather than read their names, since all 18 who applied were approved, then I think you can consider yourself in.

We also had a special application for both membership as an Associate and the waiver of the Bylaw 203, which allows a waiver of the four-year requirement in special instances and becoming a proctor immediately. And that is Gregory F. Linsin of my old firm, U.S. Department of Justice, who has been very active with the Association, attending, lecturing, *et cetera*. And that was approved.

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Seven lawyers were nominated for Associate membership. And on May 4th the Board also voted in favor of those applicants becoming members.

There were no applications for reinstatement.

By the way, Admiral Baumgartner, who is not here today—he had to return to Washington—had announced that there will be special IDs for port security—you may have read about that, it was also reported in some of the Committees—in order for people to get onto terminals. And I am making a recommendation, and the admiral has said favorably he will recommend that those members of the MLA who are paid up will get special ID's. The emphasis is paid up.

Non-lawyer applications. The following five non-lawyers were recommended for membership and were approved by the board on May 4th: Paul Barnes, Nancy Zachariades, Anna Quinn, Dwight Menard, and Steve Ficon.

Judicial members. These judicial members, as I have been mentioning, were all sponsored by Tom Rue. They are all from the United States District Court for the Southern District of Alabama, which indicates that President Rue does intend to get back into active practice.

MR. RUE: Much to the relief of my partners.

MR. BERNS: The judicial nominees who were approved were: Callie Granade, William H. Steele, William E. Cassidy, and Bert W. Milling, Jr.

On membership and Proctor applications, we have gone modern. We do use the email. I know most of you feel I'm not familiar with email procedures. We are requesting that all applications, wherever possible, and everyone has a scanner except for me, but my wife said I may get that. She is checking out her Nordstrom credit card.

If that could be done by email, we save on paper, it's easier to circulate it to the Committees, and particularly now the Committees, as you will hear later, will be able to work via chat rooms and all. It just so facilitates it, so we are asking that these applications be provided electronically wherever possible.

Mr. President, I come to the part of my report that I have to regretfully announce the list of deaths that have been reported to me. This list is from after our November Scottsdale meeting: William T. Foley, Jr. of Tilton Falls,

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New Jersey; Honorable Joel J. Tyler; Honorable Gerald L. Goettel; Honorable William M. Byrne, Jr. of Los Angeles; Stephen A. Frank of New York; William J. Burke of New York; Carter T. Gunn of Norfolk, Virginia; Howard L. Myerson of New York; David O. Cook of Washington, D.C.; Professor John R. Kramer of New Orleans; William Porteous, III, who was in Baton Rouge at the time of his death but was from New Orleans before the hurricane; Debra J. Kossow, a personal friend from the Department of Justice; and Richard T. O'Connell of New York. Mr. President, I ask for a moment of recognition.

MR. RUE: Would the membership please stand and give a moment of silence to those dearly departed. Thank you.

MR. BERNES: As was announced at the Scottsdale meeting, the Board voted, and we now will be issuing the written directory every two years. It should be coming out hopefully before our fall meeting, but definitely before the end of the year. At this time, we always end up with having changes made in terms of Committees, membership and all, and so this takes a little while.

It is most important, since everything is being done electronically and since our website is much more current because, as you report changes to me, I get them to Robin and within a week or two weeks we have those changes on the website, whereas, on the printed directory you have old information. So if you are looking for email addresses, phone numbers, firms, *et cetera*, for partners, go to the website, [MLAUS.ORG](http://MLAUS.ORG), and you will find it.

The Standing Committee review. We were doing that because of the amendments to the By-Laws a couple of years back, Section 502, which limits members to three standing committee memberships. Beyond that, to my surprise I didn't know it until this time, we now have listening members. That means people who could come and listen but cannot vote. Obviously, I have been excluded from that category. It is going to be the responsibility of the Standing Committee Chairs to maintain an up-to-date list and report changes to the MLA rep.

I am listed on seven Committees as it is, and I understand those seven Committee Chairs are getting together to vote who will not have me. I also understood it was unanimous at the first meeting.

With the approval of the Board of the elevation of 19 Associates to Proctor status, the admission of seven Associates and five Non-lawyer members,

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and the addition of three Judicial, I'm sorry, that's four Judicial members, all as presented above, the Association will now total 3,098.

This total reflects 43 members less than after the Scottsdale meeting, but although you might at first say we are losing members, considering the condition of the state of the admiralty bar and change in firms, that is not alarming. As a matter of fact, if you want to take the optimistic view, it shows that there is still an interest in the MLA and that we are a viable organization.

Again, I ask you that if you know of people who should be members, would be active assets to this Association, non-lawyers, judicial and particularly if it's judicial, please contact the President, because you handle that a little more sensitively than we do in other instances, please contact us to let us know. I work on commission, we need members.

Mr. President, that constitutes my report and I move that it be accepted without the comments.

MR. RUE: I think you have said it all, Mr. Berns. Do I hear a second? All in favor, please say aye. Opposed, no. Motion carries. Thank you, Mr. Berns. We will now move to the usual Committee reports. We will start off with Arbitration and ADR, by Jay Paré, to be followed by Don Greenman for Carriage of Goods. Please remember to give your business card to the reporter.

MR. PARÉ: Thank you, Mr. President. I have three things to report on for the Committee, the Arbitration and ADR Committee.

The first is that we have a newsletter which will be published in the MLA Report. There are some two dozen cases in the newsletter.

There is one case of particular note. And that is the *Trammochem* case, which you can find at 2005 AMC 1643. That's a case involving an arbitration subpoena where New York arbitrators issued a subpoena for documents in Houston, Texas on a third party. And when there was nonproduction by the third party, there was a motion in the Southern District of New York to compel compliance with the subpoena. One of the issues in that case, the critical issue, was whether the arbitrators' subpoena was limited by the one hundred mile rule, and the Southern District held it was not. That case is now on appeal to the Second Circuit, and the case is potentially of great significance to the Association.

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The second thing I would like to report on, Mr. President, is that we have been continuing to review the award of attorneys' fees by arbitrators, since cases have increasingly allowed that, and we have been studying guidelines for the promotion of uniform application for requests of fees and to suggest guidelines for uniform amounts to be awarded.

The third thing I would like to report on, and give a special thanks to Vince D'Orchis for coming into the lion's den once again to discuss the UNCITRAL draft instrument. There has been a significant development in that, under the anti-*SKY REEFER* present draft, there appears to be an erosion of the provisions of the convention. And so we are looking at that and possible ways to fix that or have a position on it.

That concludes my report, Mr. President.

MR. RUE: Thank you Mr. Paré.

Don Greenman for Carriage of Goods, to be followed by Michael Sturley for a report on UNCITRAL.

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

If I might go off track for just a minute, if you happen to know where the AMC's that should be handed out are, please let me know or if you stole them, please return them, because we couldn't find them before the meeting started.

Our Carriage of Goods Committee met on Wednesday, in New York.

We had a very good presentation by Professor Tetley updating us on the Canadian anti-*SKY REEFER* law. There are two parallel cases involving the law. The parties are Magic Sportswear, which is cargo, and OT Africa, which is the carrier. One track is moving down the Canadian side, and one is in England. In the Canadian case, reported at 2005 AMC 275, the federal court accepted jurisdiction under the Canadian statute that gives a Canadian court jurisdiction under certain circumstances, even though there is a form selection clause for some other country. Then the English Court of Appeals affirmed an anti-suit injunction against the suit in Canada, because London was the exclusive form in the contract of carriage. You will find that decision at 2005 AMC 2179. The House of Lords has declined to hear the Court of Appeals decision in England, but the Canadian Court of Appeals is due to hear the appeal in the Canadian case next month, in June.

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That leads me into what Jay adverted to, which is the UNCITRAL Convention. If we had a convention, perhaps *Magic Sportswear* problem of conflict between countries wouldn't occur. Will UNCITRAL help? We had a lively discussion of the meaning and effect of the draft that came out of the Working Group III at its session last December. The position of the MLA and the United States has been mostly anti-*Sky Reefer*, meaning that we are against forum selection clauses with some exceptions, such as charter party bills of lading.

There are some nations, however, that think that the subject of jurisdiction and arbitration need not be addressed in the Convention. So far, however, they have realized that the issue is important to the United States, and so it is in at the moment.

At the December session of the Working Group, the position favoring enforcement of forum selection clauses was supported by the English very strongly, because that is, as you may appreciate from the *Magic Sportswear* decision, the law of England where they enforce forum selection.

The compromise that resulted from the conflicting positions is found in the report of the 16th session of the Working Group. That can be found through the MLA website and, as I said, the draft was subject to a lot of debate in our Committee as well as in the Arbitration Committee and the International Organization Committee as far as I know. I will quote the draft provisions that came out of the Working Group in a formal report for the Committee, but I encourage you to hunt them down on the website in order to see what is going on with this very important topic.

Turning to less controversial matters, Michael Ryan gave us a report on the subject of shipper's liability for dangerous cargo. There is a recent case called *Contship Container Lines v. PPG Industries*. It's described in the Cargo Newsletter No. 47, which is on the table back there, so I won't summarize it here. The result is best described by Mike's headline for the case, however, "Strict liability isn't always strict." I encourage you to read it.

Finally, Mary Helen Carlson, who is the head of U.S. delegation to the Working Group, advised that the group of experts, which includes Michael Sturley, is to meet next month to update the draft of what has been agreed to so far for the instrument on transport law. You may recall that last meeting I reported that it was in Working Paper 56, known as WP 56. It's still there but there have been two sessions of the Working Group since then, so this will update the position.



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Our Committee is dividing itself into groups to study the draft instrument as it exists so far, and we hope to have a report prepared by the October meeting. It will be informative, because there is really nothing at the moment that our Committee or our Association needs to take a position on, because our positions or our ideas are well known already.

The hot news, which many of you may have heard already, is that the Third Circuit handed down a decision on Wednesday in a case called *Ferrostaal v. M/V SEA PHOENIX*. The result was that the Third Circuit, contrary to every other circuit that has considered the issue, said that there is no requirement for a fair opportunity to declare a higher value in order to get the \$500 package limitation for a carrier. I am told (I haven't read the case) that they essentially bought the position that was put forth by Professor Sturley some time ago in the law review article.

And with that I will conclude my report and call on Professor Sturley to tell us what's been going in UNCITRAL since our last meeting.

MR. RUE: Thank you, Mr. Greenman. Mr. Sturley, to be followed by Michael Unger, for Cruise Lines and Passenger Ships.

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

In the brief time allotted to me I cannot address the *SEA PHOENIX* case or indeed go into much detail about what has happened at UNCITRAL.

Since our Scottsdale meeting, we have had four weeks of UNCITRAL negotiations, and in the minute or two allotted to me I can pretty much only summarize the topics that have been discussed so that you will be aware of what's on the agenda and can decide, if you are sufficiently interested, to go see the full reports on the UNCITRAL website.

In late November and early December, we spent two weeks in Vienna. The principal topics on the agenda were jurisdiction and arbitration, which you have already heard about from the previous two speakers.

Another big topic on the agenda was shippers' obligations. It's worth noting that the draft, as it's going forward, is going to have much broader shippers' obligations than currently exist under the Hague Visby Rules or under COGSA. So you may want to take a closer look at that.

Probably the other most significant topic on the fall agenda was the beginning of the discussion on delivery—what constitutes delivery, when

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is delivery complete, and so on. Of course, this is closely related to the scope of the carrier's obligation.

I encourage those of you who are interested to check that out on the website. The full report is available in all six UN languages, for those who prefer a different language than English.

Last month we spent two weeks here in New York at UN Headquarters discussing a number of topics, although slightly fewer topics than we had planned to discuss, because a proposal was put forth that some of the tangential subjects might be spun off from the instrument and proposed to UNCITRAL for a model law. These would be tangential subjects where it's thought that the possibilities of getting international uniformity may be more difficult. This is in the very early stages of preliminary discussion, so stay tuned and see how that develops.

The topics we did discuss included the scope of the instrument, which has been on the agenda several times, but it appears that it's now been resolved. Certainly this Association and the arbitration committee in particular had a big influence on the way that the scope discussion was resolved.

Freedom of contract was an important topic for a number of U.S. industries, and I think on the whole the resolution of that has been considered satisfactory. Right of control was discussed extensively. We continued the discussion of shippers' obligations that had been left open from Vienna including, in particular, a discussion of damages for delay and, more specifically, liability for non-economic damages occasioned by delay, which is an important issue from both the carrier's perspective and the shipper's perspective.

Finally, on the last day of the spring meeting, we began the discussion of transport documents. We had time to discuss only two of the articles. That will be on the agenda, along with some of these other topics, including jurisdiction and arbitration, when we reconvene in Vienna next November.

The current timetable has slid a little bit from my last report. The hope now is to finish the second reading at the fall meeting in Vienna. There's a lot on the agenda. Personally I wouldn't be surprised if some of that slips over to spring 2007.

In any event, the plan is to finish the third reading in the fall of 2007. The way the U.N. works, it's essential that we accomplish that goal. Before

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this Convention can go forward, it needs to be considered by the full commission, the U.N. Commission on International Trade Law, UNCITRAL, and then go forward to the General Assembly.

Since the Commission meets only once a year, in the summer, and the General Assembly meets once a year, in the fall, if we don't complete the third reading in the fall of 2007, the entire project slips back another year. So the current plan is to finish the third reading in fall 2007, go to the General Assembly in October 2008, and then we can begin the ratification process.

Thank you very much, Mr. President. If any of you have any trouble finding the reports, send me an email, I can simply email them to you. They are all available. Thank you.

MR. RUE: Thank you, Professor Sturley. There is no need to rush to judgment on these things.

Michael Unger for Cruise Lines and Passenger Ships, to be followed by Steven Johnson for Fisheries. Excuse me, Michael Unger is not going to be making a report. Mr. Johnson.

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

The Association's Fisheries Committee met yesterday, the 4th. The meeting was particularly well attended, which I wanted to ascribe to my diligence in preparing a full agenda for the meeting, but perhaps it was also related to the free lunch that was offered.

Attendees included Tom Willis and Doug Cameron from the Coast Guard's National Vessel Documentation Center, which we appreciated greatly. We had invited the MARAD Chief Counsel's office to attend, but unfortunately the press of other business prevented that. I'm still hopeful that in the future we can find a representative from the Chief Counsel's office to participate in the meeting. But as is usually the custom, although their absence made it difficult to speak with them, it was easier to talk about them, because they weren't there.

The agenda for the meeting included a discussion of a couple of recent citizenship rulings issued by the MARAD Chief Counsel's Office dealing with citizenship in the fisheries context, including one ruling approving a pledge of more than 25 percent of a vessel owner's equity to a trustee for

the benefit of a foreign bank to finance the purchase of equity in the vessel owner by a group of management folks that were buying out others in the company.

We also reported on the status of the Magnuson-Stevens Act reauthorization bills that are presently pending in Congress, including the status of the MLA's proposals for legislation to facilitate lending on the security of limited access privileges. The report is basically that we have still a ways to go before we will be able to convince the Congress to follow our lead on a couple of these points. But we are making progress in educating the committee staff, particularly on the Senate side, to the desirability of creating a system, a filing system that will be transparent with respect to the status of liens on limited access privileges and will allow lenders to locate, to determine the priority of their liens in a clear and consistent way and perhaps pull the limited access privileges clearly out of the context of maritime liens.

As you may recall, one of the reasons that the MLA got involved, and the Fisheries Committee and Marine Finance Committee got involved in making proposals was a First Circuit case, *Gowan v. M/V QUALITY ONE*, in which the First Circuit held that limited access permits could be treated as appurtenances to a vessel for purposes of attachment of maritime liens. We have been trying to persuade Congress to clarify that that was a wrong result and that limited access privileges should be treated as general intangibles subject to Article 9 of the Uniform Commercial Code. But as I said, we have a ways to go on that.

The Senate Commerce Committee did report a bill on April 4th, and the document is a couple of inches thick, for the Magnuson-Stevens Act reauthorization. However, I was informed in a meeting with Commerce Committee staff earlier in the week that a substitute bill was going to be offered when action is taken by the Senate. And assuming that unanimous consent can be had, we should have another couple of inches of statutory material to look at probably within this month.

The Committee's agenda included a discussion of the statutory requirements for written contracts with vessel crew members.

We talked about some recent cases, including an Eleventh Circuit case involving the M/V REGAL EMPRESS that cites the *Gowan* decision in a positive light for the notion that maritime liens can attach to fishing permits. So that doctrine is sort of percolating through the court system, as we knew it would.

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We talked about the use of the MLA website. We look forward to taking advantage of many of the improvements. We particularly appreciate the efforts of the Association's officers and the folks that have been working on the development of the website. We think this is going to be a terrific tool for committees to use for the benefit of the members, and we, in particular, have in mind using it to make generally available MARAD Coast Guard citizenship rulings, materials on fisheries enforcement cases, and case law developments.

That, Mr. President, concludes my report.

MR. RUE: Thank you, Mr. Johnson. Mr. Beauregard Gelpi for Inland River Practice, to be followed by Christopher Davis for International Organizations Conventions and Standards.

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

The Inland River Practice Committee met at the offices of McAllister Towing on Wednesday morning. It was a good meeting, well attended. We had representatives from all three coasts, several inland river ports, as well as the Great Lakes.

We had a nice presentation by our Secretary, Buck McAllister, concerning several issues of interest to the industry. He presented a little paper which, unlike several authors recently, he admits was plagiarized entirely. I have that available if anybody would like it.

We also had a nice discussion led by Kent Roberts of Portland, who is giving speech at the CLE presentation today concerning the enforcement of red letter clauses in towing contracts. His paper is also available through me if you don't attend the CLE, but I recommend that you attend it. It's an interesting topic that I think that has implications beyond the towing industry. Again, any other papers are available through me, just drop me an email.

And that concludes my report.

MR. RUE: Thank you, Mr. Gelpi. Mr. Davis, followed by Jim Moseley, Jr. for Marine Ecology and Maritime Criminal Law.

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

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The International Organizations Conventions and Standards Committee met on Thursday afternoon. It was a well-attended meeting and included reports on behalf of our three subcommittees.

Bob Clyne gave the report for the Classification Societies Subcommittee, and it included a presentation on the current status of the *PRESTIGE* litigation. Comments were also received from Vincent Foley on the procedural status of the *PRESTIGE* case.

Presentations were given by Alan Van Praag for the Comité Maritime International and by Larry Brennan for our third subcommittee, which is International Law of the Sea.

Thereafter, we heard a presentation, an update on the UNCITRAL draft instrument on Transport Law by Chet Hooper, Mary Helen Carlson, and Michael Sturley.

Alan Van Praag also provided an overview of the new Hague Convention, which addresses exclusive choice of court provisions.

We were fortunate to have in attendance Admiral William Baumgartner, who attended the IMO Legal Committee meeting in London last week, and he reported on the current status of the draft Convention on Wreck Removal, the Athens Protocol as it relates to the new mandatory insurance coverage required of passenger ships, which also includes coverage for acts of terrorism.

He also reported on places of refuge, fair treatment of seafarers, and the new amendments to the Suppression of the Unlawful Acts, or SUA Convention, and the Protocol which applies to fixed platforms. Those amendments were ratified by the United States on February 17, 2006.

Admiral Baumgartner's comments were followed by a presentation from our Vice Chair, Phil Buhler on the New Maritime Labor Convention and the current status of UNESCO Underwater Cultural Heritage Convention, which has not come into force. I believe only eight countries have signed on so far.

We also covered briefly the 1996 protocol to the 1972 London Dumping Convention, which entered into force on March 26, 2006.

And Charlie DeLeo provided a brief report on the activities and upcoming meetings of the Ibero-American Maritime Law Institute.

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Finally, the Committee members were provided with a report on the recent CMI Colloquium in Cape Town, South Africa, and were advised of upcoming CMI activities that include the next annual Assembly in Dubrovnik, Croatia scheduled for the second week in May 2007. The Assembly should not conflict with either the Spring Meeting of the MLA, and hopefully the Average Adjusters Dinner in London, also scheduled for that second week.

The CMI's 39th International Conference is scheduled for October 2008 in Vouliagmeni, Greece, a suburb of Athens. And for those of you who are planning this far in advance, a CMI Colloquium is also planned for Santiago, Chile in October 2010.

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

MR. RUE: Thank you, Mr. Davis. Mr. Moseley for Marine Ecology and Maritime Criminal Law, followed by Frank Nolan of Marine Financing.

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

The Marine Ecology and Maritime Criminal Law Committee met Wednesday at the offices of Thacher Proffitt in New York. In attendance were roughly about 80 members and guests.

I would like to point out that we had a lot of participation from industry members, as well as the Department of Justice, Coast Guard and other governmental members. We think that this participation is very important, because it leads to very salient discussions concerning hot topics and gives us a great resource. We hope they will continue this participation.

After we finished Committee business, our Committee, then turned to Rear Admiral Baumgartner, who spoke to us on current topics. Among these topics were the *U.S. v. Massachusetts* case, where arguments were recently held. The court was faced with a state statute in Massachusetts that is very similar to the one that was addressed in *Intertanko* with the State of Washington.

Admiral Baumgartner also gave us an update on Marpol, which was recently ratified by the Senate concerning regulating airborne pollutants from vessels. And following along those lines, we had a discussion concerning the *California v. State* regulations concerning air emission standards from vessels that were bound for California and are within 24 miles of the coast.

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One topic that our Committee has been addressing for quite some time is the U.S. Coast Guard Marpol enforcement of early water separator issues. This time we discussed the OWS requirement of an accurate record book being kept upon entry into the United States waters. The Coast Guard is looking into such record keeping even if an illegal activity took place outside U.S. waters. Along these lines, the Coast Guard has recently put forth a policy memo or letter, which our Committee will endeavor to place on the website, available for all members to see.

We also had an update concerning the ATHOS spill from members of Gene O'Connor and Fred Kuffler.

Gene O'Connor gave us an update of OPA and also gave us some examples of some cases in Hawaii and Florida.

Our Committee also heard from Larry Kiern, who gave us a Congressional update also concerning OPA reform and also a criminal case law update from David Dickman.

We certainly appreciate the hard work of all of our Committee members, and our Committee looks forward to our joint meeting in San Francisco with Dennis's Vessel Regulation Committee.

Mr. President, this concludes our report.

MR. RUE: Thank you, Mr. Moseley. Mr. Nolan for Marine Financing, to be followed by Mr. Stephen Rible for Marine Insurance and General Average.

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

I have the report of the Marine Finance Committee. We had our meeting at Holland & Knight all day with our standing subcommittees, held out for quite sometime until the doughnut supply was exhausted.

I would like to say at the outset that we had a very well-done presentation for CLE purposes entitled Insurance and Marine Financing transactions that was presented by Messrs. Lebreton and Gustavson. I recommend it to any of you who have any involvement in ship finance.

We heard a number of reports from the standing subcommittees, which will appear in fuller form in the official report which is attached to



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the minutes concerning the development in Federal, State and Canadian statutory regulatory and case law matters.

We had an update on the progress of electronic filing with the NVDC which is permitted by statute and, which according to Tom Willis of the Coast Guard, is not likely to happen before my retirement, perhaps the retirement of the entering associates in the Association. But we still like to talk about it every six months.

We then talked about a couple of statutory initiatives that we were going to study and perhaps make recommendations.

The first one is a matter that had been reported in Scottsdale by Bruce King on behalf of the Committee involving the placement of preferred mortgages on vessels under construction. And the concept here is to streamline ship finance by eliminating the need to do it in two tiers. Normally, as I am sure most of you know, ship construction projects are usually financed with a combination of UCC concepts and state law lien statutes to deal with the fact that they are considered hybrid contracts and not purely contracts for sale of goods.

The second thing that this kind of statute would solve is the question raised in recent cases about whether a vessel, which has a punch list at delivery is, in fact, fully completed and eligible for a certificate of documentation and therefore can it sustain a valid preferred mortgage. The subject will be consigned to a working committee and the product that develops from that will be posted on the MLA website in the fullness of time.

The second thing that we are considering was discussed in tandem with the presentation by Bob Fisher concerning the presence of language in 49 U.S. Code, Section 11.301, requiring that vessels not subject to the Ship Mortgage Act, which have mortgages on them in order to perfect security interests in them, must be filed with the STB. Those of us who do a substantial amount of rail finance and, therefore, involved with the STB know that that tends to be a black hole and no one will ever find anything. We don't really find it to be an acceptable mechanism for ship financing.

We also then discussed, well what else can we do to record security interests in vessels that are not in the normal sort of loan structures. And a draft, an excellent draft, drafted by me, was presented to the Committee for discussion that would allow the filing of notices of demise charters with the

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Coast Guard under an amendment to Title 46, and it would allow then a security interest to be perfected under federal law, remove it from the UCC or the STB, and also would elevate a charter intended as a greater security interest to the level of a sub-category of preferred mortgage.

There are a number of new concepts that would extend the reach of maritime law and, in fact, extend the description of liens in the body of lien law in these two statutory initiatives. We are going to post all of these things on the MLA website by the good offices of someone who types with more than two fingers, so I assure you I will not be involved.

That concludes our report, Mr. President.

MR. RUE: Thank you, Mr. Nolan. You will be relieved to know you won't have to type those documents to get them on the website.

Mr. Rible for Marine Insurance and General Average, to be followed by John Schaffer for Marine Torts and Casualties.

MR. RIBLE: Good morning, Mr. President.

The Committee on Marine Insurance and General Averages held its meeting on Wednesday, May 3rd at CNA Marine.

The Vice Chairman, Gene George, provided illustrations of the type of insurance coverage actions that had been spawned by Hurricane Katrina.

The Subcommittee Chair, John Woods, informed that a class action has been filed. This federal action against the United States alleges that Katrina flooding damage was actually caused by various dredging companies working for the United States Government under government contract. Apparently prior to Katrina, these companies had been engaged in dredging the Mississippi River Gulf outlet. In New Jersey, they call where the river meets the sea, an inlet. But I suppose down in the Gulf of Mexico it's an outlet. In any event, there are allegations of liability for negligence and violations of the Clean Water Act. Thus, this will concern the liability, as well as pollution, underwriters.

Our guest speaker was Mr. Joseph Hughes, who is Chairman and CEO of Shipowners Claims Bureau. This entity is the managing agent for the American Steamship Protection and Indemnity Club. Mr. Hughes recalled the history of the American Club and its rather recent venture into accept-

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ing foreign shipowners. He commented on the Club's increasing involvement as a safety watchdog of the shipping community.

And lest I forget, please remember to pick up one of our newsletters on the back table. We have a law review caliber article written by Harold Watson on the contra proferentem doctrine in Marine Insurance. Thank you very much.

MR. RUE: Thank you Mr. Rible. Mr. Schaffer for Marine Torts and Casualties, to be followed by Mr. Grady Hurley for Offshore Industries.

MR. SCHAFFER: Good morning everyone.

The Torts and Casualties Committee met at 2:00 p.m. at the offices of Healy & Baillie yesterday. We had 58 members and guests participate in a lively conference.

In addition to monitoring developments regarding asbestos claims and proposed legislation, we continue to keep our eye on the area of the law of punitive damages, and we also, of course, talked over tort reform in general.

The Torts and Casualties Committee furthermore discussed and reviewed several significant limitation and personal injury decisions, including two United States Supreme Court cases and other opinions from all around the United States involving issues facing vessel owners, employers and claimants. We welcome suggestions from the Association for new and interesting projects and are always looking for additional members and significant decisions.

This is my swan song, and time does pass by quickly when you are having fun. I have been Chair of this Committee for 11 years and on the Board of Directors for the last three. It has been among my greatest professional privileges and among my highest personal honors to have been on the Board of Directors and as your Chairman, and I would like to thank everyone who has helped and supported me. I leave you with this. It's been a hell of a ride. Thank you very much.

This concludes my report.

MR. RUE: Thank you Mr. Schaffer. We will be recognizing retiring Committee Chairs and members of the Board of Directors a little bit later. Mr. Hurley for Offshore Industries, to be followed by Mr. Andrew Goldstein for Practice and Procedure.

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MR. HURLEY: Good morning, Mr. President.

The Offshore Industries Committee met yesterday at the offices of Healy & Baillie. We will submit a formal report through our secretary, Ryan Acomb.

Initially we discussed some emerging legal issues which were presented at the Offshore Marine Services Association meeting recently in New Orleans. Those issues included customs, homeland security, and coastwide trade as they affect operations on the Outer Continental Shelf.

We were also privileged to have a presentation by Mr. Frank Berry, who is chairman of the Programming Committee for the Tulane Admiralty Law Institute. Mr. Berry's report to us was the working topic for the Admiralty Law Institute, which should be noted will be held March 14th through 17th in New Orleans at Dixon Hall on the Tulane campus, will be Assessment, Insurance, and Allocation of Modern Marine Risk.

We were privileged to have Adjunct Professor Robert Acomb, Jr. address our Committee on the historical perspective of the law as developed for the Outer Continental Shelf. Mr. Acomb presented us with a bibliography, as well as a recitation of some current cases affecting offshore operations. Both of these articles or papers will be posted on the new and revised and improved MLA website.

For our meeting in San Francisco we discussed focusing on some offshore operations on the west coast, in particular on the OCS. We are looking for speakers to make presentations at that time. We are also planning on having a joint Committee meeting in San Francisco with the Marine Torts and Casualty Committee.

Mr. President, as a personal point of privilege, our Committee would like to thank you for your stewardship and also thank you for your service to our organization.

MR. RUE: Thank you, Mr. Hurley. Mr. Goldstein for Practice and Procedure, to be followed by Mr. Thomas Russell for Recreational Boating.

MR. GOLDSTEIN: Good morning,

Mr. President, officers, guests, and members of the Association.

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Before I commence my formal comments, I would like to thank John Kimball and the firm of Healy & Baillie for supplying us with conference room space for our meeting on Wednesday.

As reported last year, we have reached the end of a long road which has led to the enactment of the amendments to Rules B and C. Over the past year I have received several inquiries as to when the Association will be circulating a update to the Local Admiralty Rules. It was decided by the Committee that rather than making changes to just two rules, that the entire text of the local admiralty rules should be reviewed for possible additional suggestions.

Since almost ten years has passed since the last drafting took place, the Committee has reactivated the Local Admiralty Subcommittee, and Professor David Sharpe has volunteered to come out of the retirement to chair this Subcommittee. The Subcommittee members are Josh Force, Bob Zapf, Larry Kahn, and Jim Bartlett who have volunteered to assist Professor Sharpe to obtain the unofficial, and I must say unofficial, input from the office of the United States Marshals on the issue. Phil Berns has been volunteered to participate.

It is hoped that this endeavor will result in a draft for the Association at the next meeting. However, I recognize that may be somewhat overzealous.

John Edginton reported that progress was being made on the Electronic Communications Subcommittee.

Discussion then moved to the issue of the nonuniformity among the various districts with respect to electronic filing. In some districts it appears that the bankruptcy rules are different from the district court rules, and in other districts there is no uniformity within the district itself. I ask anyone here whose district has gone to the electronic filing system to please supply us with a copy of those rules. We are trying to put together something that's worthwhile. Josh will be contacting other members of the Committee to see if we can put together a group of about five individuals.

We were fortunate to have Larry Kahn, from Freehill, Hogan & Mahar, present a very detailed and knowledgeable presentation on the progeny of *Allied Maritime Inc. v. Rice Corporation* and its progeny. Larry assembled an outline of approximately 50 cases on the subject. I am asking the Association leadership to place this on the website. Most of these cases came

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out of the Second Circuit. I think that everyone should take a look at these cases because it has great impact upon the Rule B continuation.

I have received a letter from the law assistant for the Honorable James M. Fitzgerald, United States District Court, Senior Judge of the District of Alaska. On behalf of Judge Fitzgerald, this young man has asked us to follow Judge Fitzgerald's suggestion of allowing the preemptive bond to be established for the defendant so that there would be no need for seizure. We will be drafting a letter for the signature of the President on that issue.

Josh Force raised an issue concerning the United States Supreme Court's recent decision on allowing the use of unreported decisions. We ran out of time, however, and we will have to discuss that at a later time.

That is the report of the Committee. Thank you.

MR. RUE: Thank you, Mr. Goldstein. Mr. Russell for Recreational Boating, to be followed by Mr. Dennis Bryant for Regulation of Vessel Operations.

MR. RUSSELL: Thank you, Mr. President, members, and guests. The Recreational Boating Committee met yesterday at the New York Yacht Club. There were about 60 members and guests in attendance. This was a record for our Committee, and I wonder how we would do if we offered continuing legal education credit. Probably better.

Our meeting began with our incoming Chairman, Frank DeGiulio, reporting on recent legal developments. Of particular interest is an Eleventh Circuit decision reported last month, the *Superior Construction* case. This case involved the interplay between the Pennsylvania Rule and the Oregon Rule. It arose from an allision between a pleasure boat and a stationary barge on the Cedar River in Florida. The boat operator was intoxicated, and the barge obstructed the channel.

You recall that the Pennsylvania Rule holds that a vessel violating a law intended to prevent a collision must prove the violation could not have been a cause of the collision. The Oregon Rule provides that a vessel that collides with a stationary object must prove the allision was the fault of the stationary object or that the moving vessel was not at fault, it was an unavoidable accident.

The Eleventh Circuit held the boat operator could recover from the barge even though he was drunk. And the reasoning was that he couldn't

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see the barge, couldn't have seen the barge. I think he must have had a very good lawyer in that case.

Other cases of interest are reported in Boating Briefs, and copies are in the back of the room.

Also, we had guest speakers. Our incoming Vice Chairman, Lars Forsberg, arranged two of them; Peter Brown, of Nigel Burgess, and Christel Mohr of Marsh Private Client Services.

Peter told us about the current state of large yacht construction. It seems that Turkey and Chile are becoming significant yacht manufacturing areas for the larger yachts primarily because of low operating costs, including low labor costs.

And Christel told us about recent developments in yacht insurance. And needless to say, it's becoming more expensive and harder to get after the hurricanes.

Mr. President, this concludes my report and my term as Chairman. Thank you for the opportunity to serve.

MR. RUE: You are very welcome, and thank you, Tom. Mr. Dennis Bryant for Regulation of Vessel Operations, to be followed by Mr. William Storz for Salvage. Incidentally, the Eleventh Circuit case is a very interesting read.

MR. BRYANT: Thank you, Mr. President.

The Committee on Regulation of Vessel Operations met on Wednesday in the office of Holland & Knight.

Admiral Baumgartner made a presentation on recent Coast Guard activities, most of which have been summarized earlier. One of the topics that hasn't been summarized is the new Coast Guard policy on maritime credentials and how this is basically a six-month lead-in to the new TWIC program. It may last longer than six months, given TSA's record for getting TWIC into operation. They are going to be checking identification credentials much more carefully when you enter port facilities. And those who work there regularly, the port facility employees and the longshore workers, will need to undergo background checks.

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Amy Larson, the Chief Counsel of the Federal Maritime Commission, spoke to recent issues at her agency. They are getting much more active in taking enforcement action against ocean transportation intermediaries, particularly those operating without licenses or those who regularly deal with firms that they know aren't licensed but should be.

She also discussed the recent Supreme Court decision in the Chatham County decision, where Chatham County, Georgia operated a drawbridge. The drawbridge malfunctioned as a vessel was passing through and collided with the vessel. Not an allision, a collision. The owner of the vessel brought suit against the county for damages to the vessel, and the county asserted the defense of sovereign immunity. It went all the way up to the Supreme Court, and the Supreme Court held as of about a week ago that counties, unlike states, are not entitled to assert sovereign immunity unless they are, in fact, acting as an agent of the state. They were not in this situation.

Larry Kiern spoke to us on the CFIHS process and the recent Dubai Ports World debacle, how the issue became highly politicized, even though the committee had, in fact, done exactly what the statute had directed them to do. I am sure you read all about that *ad nauseam* in the trade press and the uninformed public press, so we need to pursue that no further.

Maritime legislation. Barbara Burke spoke about the Coast Guard and Maritime Transportation Act, which has been reported out in a conference report and should come up for a vote in the House and the Senate within the next couple of weeks if they can resolve the wind farm issue. But that bill contains new limits of liability for vessels and a provision to fix a disconnect, if you will, in the non-tank vessel response plan requirement. So we are hopeful that that measure will be enacted into law fairly quickly, and we will then have a period of probable disconnect between the limits of liability on the one hand and the COFR on the other. And the limits, the insurance limits in COFR for a period of time probably will not match up with the limits of liability to which the shipowner/operator are potentially subject. It's probably more of an academic point than a real issue, because most ships carry insurance well above their limits of liability anyway. But stand by, it could prove interesting.

Dave Dickman spoke to us about criminal liability and, once again, the big issue was oily water separators and record books. I get the impression that the industry is starting to actively work on resolving this issue, and hopefully one of these days that will no longer be the hot topic.



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Ballast Water Management. The State of California has adopted a requirement effective in 2015 that ballast water discharge in the state will have zero viable content. There is no technology that will meet that standard, and the State of California is aware of that. They are hoping to push technology. We will see what happens in 2014 when there is still inability to guarantee zero viable discharge.

Avian flu. The White House issued its implementation plan for dealing with Avian flu. It has transportation control measures in it as a potential item. Those of you who followed the SARS epidemic in the Far East about five years ago realize that it cost the industry millions of dollars to deal with that issue. It's going to be much more costly, much greater impact if we have an Avian flu epidemic. Check the force majeure clauses in your contracts. Make sure that they address the issue. Encourage your clients to have contingency plans. It will not be business as usual if the Avian flu makes the jump to human to human transmission, and we better start planning now. Most companies in the Far East already have contingency plans, and it's time for the U.S. to face the situation.

Changing slightly, the Title 46 codification project, as you probably know, the House approved the legislation some months ago and sent it over to the Senate. The Senate Judiciary Committee, also spoken to the staffer there. They are trying to get all the members of the Judiciary Committee to sign off.

No one has an objection, but getting them to focus for 15 minutes on the issue is always a problem. There's all sorts of things going on in the Senate. Some of it is illogical. Once that happens, then they will introduce the bill. They will quickly report it out of the Judiciary Committee and bring it to the Senate floor for a vote. Not a political issue, nonpartisan, but the problem is there is no political hay to be made from devoting your 15 minutes of attention to the issue. So it's difficult, but we are hopeful that it will get through in this Congress. Only time will tell.

Finally, I too am stepping down as Chair of my Committee. The name of my Committee keeps changing but it's time to bring in some fresh blood. My father told me some years ago, leave while they still want you to stay. I missed it by a couple of years, please forgive me.

MR. RUE: Thank you, Mr. Bryant. Mr. Storz for Salvage, to be followed by Douglas Matthews for Stevedores and Marine Terminal, and Vessel Services.

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

The Salvage Committee met on Monday at the offices of Holland & Knight. We had a very interesting and well-attended meeting.

Navy Supervisor of Salvage, Captain Jim Wilkins, came up from Washington to give us a Power Point presentation on the Navy's involvement with Hurricanes Katrina and Rita response down in New Orleans and the Gulf. His Power Point presentation really had some wonderful pictures, and really gave you a good understanding of the problems of dealing with hundreds of stranded and sunken vessels down there. And he highlighted, beyond the technical difficulties, some of the political difficulties of coordinating between the different agencies, Coast Guard, FEMA, the Army Corps of Engineers and state and local authorities and perhaps the need to have a coordinator in some of these instances who can reach beyond state borders.

Carlos Moran came from Mexico City, he is a maritime attorney, very well spoken person, gave us also a very good Power Point presentation on salvage. In particular, his firm dealt with representation of the salvors in a case involving a container carrier that had stranded in Ensenada, which is south of San Diego. The container ship had stranded parallel to the beach, and the case was really fascinating, because it presented really the full range of technical difficulties that you could face in salvage cases. It was in very shallow water. Sand continued to build up around the vessel. So some of the easy methods of extracting a ship from a strand didn't work. They were unable, even with a number of tugs, to extract the ship. They had all sorts of pulling equipment. That was not adequate. And eventually what they had to do was remove all the fuel on the vessel and most of the containers to lighten the ship. They also had to dredge.

An interesting thing there, on the legal side, was the difficulties that they faced in dealing with the Mexican Government both the Federal Government and the local authorities down there in Baja, California. On the environmental side, as far as environmental restrictions, sabotage restrictions, because they wanted to bring in U.S. and non-Mexican flag vessels to do the work. And also various difficulties with Customs just in terms of removing the various containers from the ship. So not unlike the experience that's faced in the United States.

Ridge Porter gave a very good presentation on the years of representation that he has undertaken in the TITANIC case. That case has gone back and forth from the Third Circuit three times, gave us an overview of that

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litigation. I think the interesting point there was the reality, if you are going to be involved in historic shipwreck salvage, you can anticipate some very serious restrictions and limitations on any kind of sale of artifacts, probably not going to be able to sell, probably not going to be able to disperse them.

Jason Harris, our Secretary, provided us with a very nice salvage update. There are some copies on the back desk.

I have concluded my five years of service as the Chair, like a lot of people here. I'm going to be succeeded by my Vice Chairman, Rich Buckingham. I want to thank everybody that has been involved helping me on the Committee. I want to especially thank the Board being represented by Mr. Tom Rue, who has been a wonderful source of advice. I also want to thank one of the longest serving members of the Salvage Committee, Captain Carl Lundin who always provided good advice, the benefit of his very strong expertise.

MR. RUE: Thank you, Mr. Storz. Mr. Matthews for Stevedores, Marine Terminals, and Vessel Services, to be followed by Dana Henderson of the Young Lawyers.

MR. MATTHEWS: Mr. President, the Stevedores, Marine Terminals, and Vessel Services Committee met at Healy & Baillie yesterday at 9:30 at our usual time. We had 26 people in attendance. It was a very interesting meeting.

True to form, we discussed issues under the Longshore Act in the first half hour. It was reported that the BRB no longer has the sanction or the onus upon them to get decisions out within a year of an appeal being filed. This was a provision put into the recent Appropriations bill. It was the thought of several people that the BRB may go back to its previous practice and sit on appeals for several years, but if that happens, we are told that in the next appropriations bill that provision will be put back in.

We had a report from David Lowe, who is the Chairman of our Subcommittee on Freight Forwarders and Customhouse Brokers. He reported on several cases of interest. They will be posted on our committee's website.

We also had report from our other Subcommittee Chairman, Clay Rankin, the Chairman of the Subcommittee on Vessel Repairs and Shipbuilding. He and I asked anyone who is interested in participating on this Subcommittee to contact either of us.

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At this point we went into what was the general discussion of port security. We discussed the bills in the Senate and the House, the Greenlane bill and the Safe Ports bill, and that they are pretty similar bills. We talked about the present state of scanning of containers coming into the ports. We also discussed what the Chinese are doing and that they are way ahead of most people trying to guarantee the U.S. that their containers will be a hundred percent scanned before coming into our ports, which is an interesting idea as they would then jump ahead of most people in having containers discharged and on to their receivers.

As a part of the interest in port security, we will maintain a folder on a discussion part of our website on which our members will post information that they receive regarding port security. And I invite anyone in the MLA to visit our website and add any information they can.

Mr. President, this concludes my report.

MR. RUE: Thank you, Mr. Matthews. Dana Henderson for the Young Lawyers, to be followed by Jim Moseley for the American Bar Association.

MS. HENDERSON: Mr. President, members, and guests of the Association.

The Young Lawyers Committee had a wonderful and very productive meeting yesterday. We had a number of new faces, and we are happy to see lots of new members interested in becoming more involved in the Association.

So as an ongoing note, we ask all of you to put us to work. We have lots of people who are interested in working on the various Committees' projects, and from your report today, it sounds like the Association's Committees are all doing interesting work. We haven't had requests for projects in some time, so please let me know or any of the rest of our members, and we will be happy to get you staffing new projects.

Yesterday we were pleased to have a presentation by Marc Marling, who is now general counsel of CMA-CGM of America and Colin McRae of Hunter Maclean in Savannah. They gave us an excellent presentation on working out the frustrations between in-house and outside counsel. And they offered great advice to our members about client service and being responsive to clients. So our Committee thanks them for that presentation, it was great.

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Also since our last report, we were pleased to offer up to the Association the results of our CLE survey wherein we had a number of members who provided the Association with a summary of the CLE requirements of our various coastwise states and who gave us information as to what the Association will have to do in order to become an accredited provider in the various states.

For that we have a long list of people to thank, including our Chair, Katharine Newman, who can't be with us today. She was our Chairperson for this particular project and we thank her for that. We also thank Jonathan Thames, Mike Eaves, Craig Brewer, Jim Koelzer, Marc Marling, Geoff Losee, David Marvel, John Holloway, Chuck Diorio, Fred Goldsmith, Brent Skolnick, Bryant Gardner, Rob Burger, Ian Carvajal, Kevin Lennon, Jason Harris, and Michael Daly.

We also wish to thank Betsy Meers and Lili Beneda for coordinating our, as always, successful social event last night. Again, we had lots of new faces, we had a really nice time out. So we thank them for that.

And Mr. President, that concludes my report.

MR. RUE: Thank you, Ms. Henderson. Mr. Moseley for American Bar Association, followed by Betsy Meers for Continuing Legal Education.

MR. MOSELEY: Thank you, Mr. President.

As all of our members know, one of the elephant burial grounds that past MLA Presidents go to is to be the ABA representative at the ABA House of Delegates. I am the only member of the Committee, and I chair the Committee. It's a good position. The Committee meets every day, but we have very limited debate.

Before the ABA House of Delegates meetings, we coordinate with the Board and the Officers. I appreciate very much how kind they were in giving guidance, help, and assistance.

As you know from the last meeting, unfortunately our opposition to the ABA resolution on ocean policy was defeated. But that was only a temporary setback and we are still trying to make some progress before any issues come to Congress, if they do. Our position in a nutshell was simply that the ABA position did not address adequately fisheries or commercial marine transportation of any sort.

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Important topics were only mentioned in a few lines of the Report. The MLA has a great deal of thanks to give to the Fisheries Committee and its chair, Steve Johnson; to Dennis Bryant, as Chair of his Regulation Committee; and to the Marine Ecology and Maritime Criminal Law Committee. They did an excellent job of putting our paper together.

And so what do we need to do, looking forward? First, continue to join with the ABA on the Law of the Sea Convention. We were about ten years ahead of them in favor of the Convention. And we maintain our relationship in that regard.

As to most of the other things, the MLA is not in agreement with the ABA Resolution of August '05. We think that the very significant matters, as we perceive them, were bypassed by the Standing Committee's resolution. We haven't given up on that, and we are still underway.

I would ask that each of you, since 50 percent are members of various sections of the ABA, make his voice heard. When you are meeting in these sections, please, please, please get on the subcommittees that relate to the pollution law of the seas. All of those matters come before every section in the ABA.

The House of Delegates meets only twice a year, and it's significant that we have the section voice heard through our own members, being parts of those subcommittees. So you can do that now, it's never too late to do that. You can do it when you get back to your offices. Whatever ABA committee or section you are in, whether TTips or others, you can play a major part.

The Foreign Sovereign Immunities Amendment is still out there somewhere in cyberspace. They said it was a ten-year project, but we are trying to monitor it as best we can because it was substantially an MLA baby when it was passed years ago, and we need to continue to have our input.

The last comment I would make, as ABA members, we only have one vote in the House of Delegates. There are many that have stronger votes, and we are trying to make our voice heard in a sensible way.

We lost another vote. The ABA would have been \$20 million in debt over the next five years without a dues increase. The ABA wanted to borrow Keating and Bonner, but we wanted to trade them for two others. So when your dues statement comes, you will see that it's been raised about \$50.

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I put a postscript on that. We tease the Officers of this organization a great deal, and we have plenty of jokes about how carefully they watch every penny. But the fiscal policy of this Association for over a hundred years has been superb, and they watch every penny, and we are fiscally sound. And that's part of what we try and teach our MLA Young Lawyer Committee, and that's part of what we try to do year after year.

So thank you, Mr. President, thank you for a sterling job over the last two years. It's always great when we have another southerner in the chair. Tom did us proud and you have honored us by being our president. Thank you.

MR. RUE: Thank you, Mr. Moseley. Betsy Meers from Continuing Legal Education. I guess not. Everybody passed. Kim Kearney for Uniformity of U.S. Maritime Law, to be followed by Kevin O'Donovan for Website and Technology.

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

The Uniformity Committee met on Wednesday at the offices of McDermott & Radzig, and it was very well attended. For the second time we were able to offer CLE credit for participation in the meeting. And we would very much like to thank Betsy Meers of the Continuing Legal Education Committee for helping us with the arrangements for the CLE credit.

One focus of the meeting was to discuss several recent cases which highlight divergence of opinion on whether the defendant in an admiralty case has a right to trial by jury. Jim Bartlett was good enough to come and give us his insights on one of those cases, *National Casualty Company v. Lockheed Martin*, in which he represents the plaintiff in a marine insurance declaratory judgment action. In *Lockheed Martin* the District Court found that where the plaintiff has designated the case as a Rule 9(h) case, the defendant may not request a trial by jury on a counterclaim that is factually and legally intertwined with the main complaint.

However, Jim has reported that the Fourth Circuit is now considering the defendants writ of mandamus on the jury trial issue. So we will be following that case with interest. It and the other cases that we discussed at the meeting will be in our full written report.

That concludes my report, Mr. President.

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MR. RUE: Thank you. Mr. Kevin O'Donovan for Website and Technology, to be followed by Keith Heard for BIMCO.

MR. O'DONOVAN: Good morning, Mr. President, members of the Association.

The Website and Technology Committee met yesterday at 11:00 at the offices of Healy & Baillie. It was a well-attended meeting, and it was nice to see some new faces at the meeting.

As you have all heard from other speakers today, the private side of the website was obviously a topic of discussion at our meeting. We talked about the use of the discussion board to communicate with Committee members outside of the spring and fall meetings and also talked about some possible additions or changes which could be made to the private website. We hope to be able to report about those changes at future meetings.

We would invite you all to please go to the private side of the website, to try it out and to use it to communicate with the members of your Committees, and also to see what the other Committees are doing between now and the San Francisco meeting.

On the technology side of our Committee, we talked about the technological aspects of x-ray screening and radiation screening of containers as they are coming into our ports and leaving foreign ports as well as the technological aspects of the TWIC identification cards, with the goal of perhaps joining with some of the other Committees that are studying these subjects.

The final topic of discussion was the San Francisco meeting. And we note that at the Pacific Admiralty Seminar, one of the topics, which is near and dear to our hearts, is electronic discovery in maritime cases.

Mr. President, that concludes my report.

MR. RUE: Thank you, Mr. O'Donovan.

While Keith is coming up, let me just make a comment on the website. If you have not received a letter from me, you soon will be receiving a letter from me that has attached to it your password and user identification. It also has attached by the numbers photographs of the screens that will come up, how to log on, how to join a committee, how to monitor whatever is going on with the website. These instructions are also on the



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website. There is a link on the website that you can click on and get these same instructions. Believe me, if I can do it, I know you can. Mr. Heard.

MR. HEARD: Thank you, Mr. President. It's my privilege to serve as the Association's co-opted delegate to BIMCO's Documentary Committee, which prepares, revises, and updates model contracts for the shipping industry.

The Documentary Committee met in Nice, in the South of France in late November after our meeting in Scottsdale. At the Nice meeting we heard a report on initial work done to prepare a draft of something known as CEMENTVOY, which is a standard voyage charter party for the transportation of bulk cement and clinker. PROJECTCON, another charter form, was up for adoption, and after some fairly extensive discussion, was approved, subject to incorporation of certain changes in the final form. Project Con is a contract for the transportation of special projects and heavy-lift cargos on a voyage charter basis.

One BIMCO project in particular has attracted more interest from members of the Association than any others in recent years, and that is the proposed standard new building contract which would be a standard form shipbuilding contract. The subcommittee that is preparing the draft of this contract held an initial meeting last July and second meeting in October. The draft was not available in Nice, but we now have a very tentative first draft for review and discussion at our next meeting in Helsinki in just about two weeks' time.

The BIMCO team working on this project consists of a ten-member subcommittee and a five-member drafting committee, three of whom are from the subcommittee, with the other two being English solicitors. The subcommittee has a representative from the Chinese shipbuilding industry but none as yet from Japan or Korea. However, we learned in Nice that the Japanese shipbuilding industry appears to be inching toward participation in the project.

In addition, there will be a meeting in the Far East in September to discuss the project and to review whatever draft is then available with representatives of the Chinese, Korean, and Japanese shipbuilding sectors.

Now, I mentioned that a very tentative first draft of this contract will be discussed in Helsinki in a few weeks. Some of you have expressed interest in seeing that, but it is not a document that is ready for review outside of the Documentary Committee. It's really more of a working paper

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or set of ideas at this point. However, when we have a proper draft, something that's ready for outside dissemination, I will be happy to provide that to those members of the Association who are interested in offering their comments.

Let me now address my final item. The agenda for Helsinki also includes consideration of a revised standard Himalaya clause, which Mac Deming used to call a "Hi-maulya" clause, that is being offered for adoption. I knew this project was underway, but I believe this was actually the first time that a draft has been made available and it's also the last time, because it's being offered for adoption. However, this clause is so brief I will just quickly read it to you.

The first subparagraph reads: "All rights defenses, limitations and exclusions of liability that apply to the carrier by law and/or under this contract of carriage shall also apply to the same extent to any servant, agent or independent contractor engaged by the carrier." The second subparagraph reads: "The carrier makes this agreement as agent for such person and in return for that person's agreement to provide services and/or to handle the goods on behalf of the carrier."

Now, the clause is the essence of simplicity, but I'm not sure it's the essence of perfection. Since there is much case law on the validity and interpretation of Himalaya clauses in this country, I would hope to obtain comments on the draft clause, the BIMCO draft clause, from the Committee on Stevedores, Marine Terminals, and Vessel Services, as well as from the Carriage of Goods Committee. I have already talked to Don Greenman about it, and he has put me onto Paul Keane, and we will be in discussion.

Finally, Mr. President, I would like to say I have greatly appreciated the support and encouragement you have given me as the Association's delegate to the Documentary Committee. I will be staying on, but it's clear you won't be, unfortunately.

More importantly, I want to acknowledge and thank you for the interest and enthusiasm you have shown in building a stronger and more active relationship between BIMCO and our Association over the past two years. I know that Soren Larson and the other members of the BIMCO Secretariat are greatly appreciative of that. I'm not sure the other members of the Association were aware, and I wanted to make them aware of your good work in that regard. Thank you, sir.

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MR. RUE: Thank you, Mr. Heard. Very kind words. Mr. Forrest Booth for the Planning and Arrangements Committee for the 2006 Fall Meeting, to be followed by Dennis Minichello for the 2007 Fall Meeting. And Mr. John Edginton.

MR. BOOTH: Mr. President, members, and distinguished guests of the Association. I bring you previews of coming attractions.

The MLA will meet this October for the Fall Meeting in San Francisco. The dates are Wednesday, October 4th, to Saturday, October 7th. There is a flier which is on the corner table in the back of this room, and there are also some on the tables outside, which give you some of the details of the meeting.

The meeting, I can tell you, is to be held at a very opportune time. The months of September and October are some of the best weather in San Francisco, and this week is also called Fleet Week in San Francisco, when a number of things occur, including the Blue Angels flight demonstration team, which I will mention again in a moment. The other piece of good news I can bring you, by a special request made by my good friend Ray Hayden, we will not have an earthquake during that week in San Francisco.

The Fall Meeting is held in conjunction with the Pacific Admiralty Seminar, which many of you have attended and many of you have even spoken at over the years. With some considerable effort, our committee has been able to coordinate the Pacific Admiralty Seminar with the Fall Meeting of the MLA.

The MLA's Committee sessions will take place on Wednesday and Thursday. On Friday the Pacific Admiralty seminar will have its program, which is CLE accredited, and can be accredited in any state, because the Pacific Admiralty Seminar is an arm of the Bar Association in San Francisco. So you would get about six hours of CLE credit if you attend the Pacific Admiralty seminar on Friday, including half an hour of ethnics. And, in addition, CLE credit will be arranged for some of the Committee meetings of the MLA.

On Wednesday night there will be the President's cocktail party reception at the World Trade Club in San Francisco, and that is a reasonably short walk from the Palace Hotel, which is where the meeting will take place. John is going to have some comments about the hotel in a moment.

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Thursday night we will have a dinner at the Palace Hotel, and Friday night is a dinner separately paid for and ticketed at the California Culinary Academy. It's an interesting organization that trains *cordeon bleu* level chefs in San Francisco, and they are putting on a buffet for as many registrants as they can hold, about 325, I think, is the capacity.

On Saturday morning the Association will have its General Meeting, and in the afternoon there is a cruise on San Francisco Bay on one of the Hornblower dining yachts called the SAN FRANCISCO BELLE, and featured during that cruise is a performance by the Blue Angels. The SAN FRANCISCO BELLE normally positions herself at one end or the other of the flyway, either out by Alcatraz on the east side or out by the Golden Gate Bridge of the west side, and the Blue Angels fly over.

On the brochure is a photograph that I took last year of the Blue Angels and they were probably 25 to 30 feet off the deck of the ship when they went by. If you wear hearing aides, I recommend you turn them off. John has some comments about the hotel.

MR. EDGINTON: As Forrest mentioned, the hotel is the Sheraton Palace Hotel in San Francisco. We have a block of rooms reserved there. All of the Committee meetings are going to be there.

It's a very historic hotel, having survived the 1906 earthquake, only to be destroyed in a succeeding fire, however. But it's been rebuilt and our "Cuisines of San Francisco" dinner is going to be in the Garden Court Room, which is one of the real centerpieces. There is a picture of that on the backside of the flier. We have gotten a very good room rate there of \$239, which I might mention is 40 bucks less than I'm paying here for a much lesser facility, to be kind to them.

It is, however, important that you make your hotel reservations early. This is going to be a very busy week in San Francisco. There are two other major conventions there and so on. You have until about August to do this on our room block there. There will be more information there.

In the flier is the hotel's website. This is our own private page on their website to make reservations. You can type that into your browser and make your reservation now. In a few days I am hoping that this flier will be up on the MLA website. And if J.P. Jones can accomplish it, the website links to the Palace Hotel and to the Pacific Admiralty Seminar will be live because you have to reserve separately for the Pacific Admiralty Seminar as well.

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I know how everybody likes to play with Price Line and some of these things these days, but it's important to us that you try to stay at the Palace. This is how we get the free rooms for the Committee meetings and certain amenities and this sort of thing. It all comes in consideration for the Thursday night dinner, which your registration fee will pay for.

So in some ways this is more like a resort meeting, although it's not that, in the sense that we do have a central hotel all of the activities are going to be taken care of at that place. One note to Committee Chairs. If you are a Committee Chair who is retiring, and you have a successor, would you please pass the material about the Committee meetings in San Francisco on to your successor so that we can keep that organized properly.

There will be a registration form up on the website soon. It will be one of these kinds of things where you print it out, add your check, sign up for all the various events and mail it in.

As Forrest mentioned, there are three separate ticketed events. I mean the Pacific Admiralty Seminar, which you can sign up on their website; the Culinary Academy dinner, the price of which is going to be \$64; the seminar is \$325; the Blue Angels harbor cruise is \$75; and the registration fee, assuming you get it in early, is \$250 for members, \$150 for spouses, and that covers the cocktail party and dinner at the Palace, as well as all the amenities in the meeting rooms. We will additionally have some spousal events.

If you don't want to drive there yourself, there will be transportation available to take you up to the wine country, to take you to Carmel, and Monterey, where the aquarium is one of the attractions. We are going to arrange for some walking tours of San Francisco with San Francisco City Guides. I think I have persuaded my wife to repeat her architectural tour of interesting houses and buildings in Berkley. As you know, Berkley is another one of these little enclaves of the arts and crafts people.

Again, I would encourage you also to make your restaurant reservations early because that is going to be a very busy week. One of the conventions in San Francisco has medical overtones, and you know what they do to restaurant reservations.

Do you have anything more, Forrest?

MR. BOOTH: That concludes our presentation.

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MR. RUE: Thank you, Mr. Booth, Mr. Edginton. While Dennis Minichello is making his way to the microphone, let me remind you that tonight's cocktail reception and dinner is not at the Marriott Marquis. If you go there, you may be with someone else. We are at the Chelsea Piers, Pier No. 60, at 23rd Street. Mr. Minichello.

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

The 2007 resort meeting will be located at the Sanibel Harbor Resort and Spa in Fort Myers, Florida. The dates are October 24th to October 27th. The Sanibel Harbor Resort is a beautiful hotel; it's located on the water. It has what I describe as a casual elegant classic Floridian style of architecture, very open, very warm but also very intimate in a way, which I think all of the attendees should appreciate once they get there. There will be many opportunities for people to get together because of the physical configuration of the hotel. Of course, there are pools, there is a world class spa, tennis on property, golf is nearby, and there are three restaurants on property, including a very good steak house.

Fort Meyers is serviced by a very good airport, which has many good strong connections with the east coast, the west coast, the midwest and many other destinations. So it really is very easy to get to from just about anywhere. In addition to that, the airport is only about a 30-minute drive from the hotel. So it's very convenient in that regard.

We don't have the agenda set up yet and a lot of the other details. You can assume that it's going to be very similar in format to most of the resort meetings that we have had, including the past resort meeting that we just had in Scottsdale.

It should be a very good venue for a successful meeting, and I will look forward to seeing all of you there. Thank you.

MR. RUE: Thank you, Mr. Minichello.

Has Michael Chalos arrived? He wanted to make a report on the Ad Hoc Environmental Crimes Committee. He had an emergency. He did telephone in and say he might not be able to be here. Obviously he hasn't made it.

Let me just remind you of some of the remarks that Mr. Bartlett gave to you, and those are that the MLA is seeking to serve as facilitator between industry and the government to try to arrive at some best practices guidelines

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so that we can avoid the criminalization of what legally is ordinary negligence. This is, of course, entirely different from any intentional acts. If you are interested in participating in that initiative, you should let Michael Chalos know. Just send him an email because that effort is well underway, but we could use more assistance on that.

Let me also note that we will be in San Francisco, as Mr. Booth and Mr. Edginton reported, the first week in October. So make your plans to be with us on that occasion.

I also want to remind you that the Tulane Admiralty Law Institute will be held next March in New Orleans. They have been a great supporter of the Maritime Law Association. It's now our time to be a great supporter of theirs. So please make your plans to attend there, they will have the usual good program.

One upside is my past few visits to New Orleans I have been able to get into any restaurant I want, any time I want. That's an extra added attraction.

I want to recognize four retiring Board of Directors members. Bob Gruendel, Brett LeBreton, John Schaffer, and Tony Whitman. I'm not sure all of those individuals are here but if you would come forward, I would like to present to you a certificate. Thank you.

I would also like to recognize a number of retiring Committee Chairs. Again, we all know that the work of this Association gets done through the Committees, and the Committees work well when they have great Chairmen, as these individuals have been: John Schaffer. Just a glutton for punishment. John was an outstanding Chairman for 11 years.

Tom Russell, for Recreational Boating. Bill Storz, for Salvage. Dennis Bryant, for Regulation of Vessel Operations. Steven Rible, Marine Insurance and General Average. Michael Unger, for Cruise Lines and Passenger ships, but I don't believe he is here. I feel somewhat remiss, or not remiss, I feel somewhat sorry for those incoming Chairs who are taking these individuals' positions, because you have rather large shoes to fill, but I know that you will discharge your duties in the very best ways.

Admiral Crowley, would you step forward for just a moment, please, sir? This is going to be painless. I want the membership to know that we have been pleased with a wonderful relationship with the United States Coast Guard and, in particular, with Admiral Crowley and also with Admiral Baumgartner.

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We presented Admiral Baumgartner with a certificate of appreciation yesterday since he was unable to be here today.<sup>1</sup> We are so delighted that you could be with us today, John. Permit me to read this for you and present it to you.

The Maritime Law Association of the United States expresses its sincere appreciation for the services and exemplary assistance of Rear Admiral John Crowley, the Judge Advocate General and the Chief Counsel of the United States Coast Guard.

Rear Admiral Crowley has been a dedicated officer of the United States Coast Guard since 1975, serving with distinction in numerous high level capacities, including Special Assistant to the Judge Advocate General, Chief Coast Guard Legal Policy and Program Development, Academic Director at the Naval Justice School, Special Assistant to the Secretary Ridge of the Department of Homeland Security and the Interim Director of the Homeland Security Center, Study Coordinator for the 1999 Interagency Task Force on the U.S. Coast Guard Roles and Missions, Deputy Chief of Staff of the United States Coast Guard and as Commanding Officer of the U.S.C.G. LEGARE and U.S.C.G. POINT STEELE.

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<sup>1</sup>The certificate of appreciation presented to Admiral Baumgartner reads as follows:

The Maritime Law Association of the United States expresses its sincere appreciation for the services and exemplary assistance of Captain William D. Baumgartner, United States Coast Guard, Chief, Office of Maritime and International Law, Washington, D.C.

Captain Baumgartner has been a dedicated officer of the United States Coast Guard since 1980, carrying out many highly significant responsibilities and serving with distinction in numerous capacities including Staff Judge Advocate for the Seventh Coast Guard District, Chief of Staff for Homeland Security Task Force Southeast, and as Commanding Officer of the USCG POINT VERDE and the USCG PENOBSCOT BAY. In his service to the Country and the Coast Guard, he has performed his duties as Chief, Office of Maritime and International law, in an outstanding manner. These duties included his servicing as the Head of the United States Delegation to the International Maritime Organization, IMO Legal Committee, and at the SUA Diplomatic Conference held in 2005.

Although intensely involved in the aforesaid duties, Captain Baumgartner participated in numerous significant activities of The Maritime Law Association of the United States by making presentations to various committees of the Association on topics of maritime law, marine ecology,



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In his service to the Country and to the Coast Guard, he has performed his duties as Judge Advocate General and Chief Counsel of the United States Coast Guard in an outstanding manner. These duties included his serving as the Interagency leader in developing the National Strategy for Maritime Security and the Maritime Operational Threat Response Plan, supervising and supporting the Head of the United States delegation to the IMO Legal Committee, leading Maritime Safety and Security Council through several regulatory projects including Final Rules and implementing the Maritime Transportation Security Act of 2004, and providing necessary leadership which resulted in the enactment of the Coast Guard and Maritime Transportation Act of 2004 and the United States Coast Guard Hurricane Relief Act of 2005.

Although deeply involved in the aforesaid duties, Rear Admiral Crowley participated in numerous significant activities of The Maritime Law Association of the United States. During his tenure as Judge Advocate General and General and Chief Counsel of the United States Coast Guard, he has consistently supported, educated and informed the members of The Maritime Law Association of the United States. Further, he brought to the Association not only his strategic expertise, able talent and commanding knowledge, but also a sense of camaraderie, friendship and collegiality. In doing so he brought the Coast Guard and the Association into a much closer working relationship.

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governmental regulations, Coast Guard Policy, proceedings at the IMO and other matters. In performing these tasks during his tenure as Chief, Office of Maritime and International Law, he has consistently educated and informed the members of The Maritime Law Association of the United States. Further, he brought to the Association not only his considerable expertise, able talent and expansive knowledge, but also a sense of comradery, friendship and collegiality. In doing so, he brought the Coast Guard and the Association into a much closer working relationship.

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 services and assistance of Captain William D. Baumgartner, and we express our gratitude to our professional colleague and friend.

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

[14480]

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 services and assistance of Rear Admiral John Crowley and we express our gratitude to our professional colleague and friend.

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

Dated this 18th day of March 2006.

John, it's my great pleasure.

Now we come to my favorite part of the program. Mr. Hayden, would you give the report of the Nominating Committee, please.

MR. HAYDEN: Good morning, ladies and gentlemen.

The Nominating Committee met on Wednesday and by unanimous vote proposes the following for the Board of Directors and Officers of the Maritime Law Association. The Nominating Committee proposes the following for three-year terms on the Board of Directors: Joe Basenberg, Mobile Alabama; Grady Hurley of New Orleans; David Farrell of Massachusetts; and John Kimball of New York. And the following for the next year's Officers of the Association: For Membership Secretary, Philip Berns of the great seaport on the Nevada River, Las Vegas. For Secretary, James Bartlett of Baltimore. For Treasurer, Robert Clyne of New York. For Second Vice President, Pat Bonner of New York. For First Vice President, Warren J. Marwedel of Chicago.

Now, Mr. President, as my last act as the Immediate Past President of this organization, a position which many members like to refer to as the President once removed, and as the current Chairman of the Nominating Committee, I have a special honor and privilege, one that no other Past President has ever had, of reporting that the Nominating Committee of our Association, under a unanimous nomination, proposes for President the first female in the history of our 107 years. Mr. Rue, the nomination the Nominating Committee proposes is that of Liz Burrell.

Thank you.

[14481]

MR. RUE: Thank you.

Is there a second?

A CHORUS OF VOICES: Second.

Mr. Lord, as Senior Past President, would you like to make a motion in favor of the nominations as reported?

MR. LORD: Mr. President, in acknowledgement of and expression of appreciation for the excellent reports of our Officers, our Committees, and our Association representatives, I move that the meeting be adjourned.

MR. RUE: Not yet.

I give you the floor again, Mr. Lord.

MR. LORD: I move the acceptance of the report of the Nominating Committee.

MR. RUE: Is there a second?

A CHORUS OF VOICES: Second.

MR. RUE: All in favor, please say, aye. Opposed, no. The ayes have it. It's unanimous; we have a new slate of Officers.

As Ray noted, for the first time in our 107-year history we will have the pleasure of having a President with whom no member will be ashamed to be seen or associated.

Before I relinquish the podium to Madam President, permit me a few remarks. Two years ago you members bestowed on me the greatest honor that an admiralty lawyer can attain, serving as your President. I thank you from the bottom of my heart. It's been an enjoyable and an incredible journey, although on occasion somewhat stressful.

As I said two years ago when I took this position, I didn't get here by myself and acknowledged the assistance of a number of people. I won't rename them again, but I want to thank them again. Today I want to thank those individuals who lived through the experience with me.

[14482]

Certainly I believe that behind every good man is a great woman, and I am president of that club. My wife Joy deserves a lot of the credit for seeing me through this journey. Thank you, sweetheart.

If you ever telephoned me, you undoubtedly spoke to my secretary, Joan Nielson. She deserves a lot of credit for what got done. That which got done promptly and properly belongs to her. The rest of it resides with me.

I would like to thank my firm, Johnstone Adams, and in particular my maritime partners, Mike Allen, Alan Christian, and David Hannan. Without them I couldn't have done this.

Thanks always go to Robin Becker of PC Solutions. She was an individual whom you could call on a moment's notice and say I need this and it would be done, it would be done correctly, and she always did it with a smile on her face. Thank you, Robin. Also, when I needed some special expertise, I would call on Doug Petko, also of PC Solutions. He was always very helpful.

To the Committee Chairs of the last two years, you individuals did a fantastic job. The Association could not function without you. And I appreciate those of you who made a particularly quick response when our time to get something together wasn't very long.

A special thanks to all who served on the Board of Directors. You were a model of deliberation and action, just what the Association needed.

Ray, it was always comforting to know that you were available should I need some advice. And on one of those times when you were out in Europe taking depositions, I had to call on Bill Dorsey and Jim Moseley. To all three of you great Past Presidents, thank you.

On that note, it's my privilege to congratulate the new officers, Liz, Warren, Pat, Jim, Bob, and Phil. The Association is in great hands, and I thank all of you again for affording me this great privilege. Madam President, the helm is now yours, I wish you smooth sailing.

MS. BURRELL: Thank you all very much. Thank you very, very much.

This is such a joyous occasion for me. I think it's also a joyous occasion for Tom. In fact, when we were in London last week, I was not even permitted to cross the street by myself, because he was so concerned with protecting my bodily integrity so I could be here today.

[14483]

Now that I have made it here in one piece, my first act is to express the Association's thanks to Tom with a testimonial of appreciation. It reads:

The Maritime Law Association of the United States presents this testimonial of appreciation to Thomas S. Rue in recognition of his distinguished service as president during the years 2004 to 2006.

The Association takes this means in recognizing his able and successful leadership, his constructive efforts and his outstanding contributions to the Maritime Law Association of the United States and the field of maritime law.

That testimonial will bear my signature and that of the Secretary, but we deferred that action to make sure we were the right people.

MR. RUE: Thank you. Was I President for two years? It didn't seem really that long.

MS. BURRELL: In addition to those formal expressions of appreciation, I would like to add my own word of thanks for Tom. Tom has been a good shepherd of this Association during a time of great change.

It is one thing to have ideas; it is another thing to put them into action. The action is always the hardest part of any task, and that is what Tom has accomplished.

For example, within six months of being elected, Tom led the first Fall Meeting in decades outside of a resort or New York setting. He was working without a net, he was very courageous to do this.

He was also courageous to put into effect all of the reorganization of our Committees. That restructuring not only demanded an enormous amount of planning and administrative work and but also involved dealing with the people who were affected by all of these changes. Tom did that with expertise, aplomb, and charm.

I will just mention one other of his many, many accomplishments in effecting change within this Association, that has already been raised a number of times today: When you go back to your offices, you will find a packet of materials that will introduce you to the members' side on the website.

These new website features will provide every member of this Association with access to the deliberations, the processes, and the projects of

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every aspect of this Association's activities. They also will bring us all a lot closer, as well as allowing the Association to move forward with its work in the way that it's never been able to do before. Tom deserves all the credit for that. It's a splendid accomplishment.

Tom has always used the same charm and diplomacy that made him so effective within the Association outside of the Association. For example, it's during Tom's tenure that we had our first joint meeting with the Canadian Maritime Law Association Board of Directors, thus increasing the already warm ties between those two Associations and allowing us to further common interests. That was a wonderful experience.

Tom has also exercised that charm and diplomacy to enhance our already great relationship and mutual respect with many members of government, both those who are involved in forging international law as well as those who are working on the home front.

Tom has been a great teacher to me. He has taken such care to make sure that I learned all of the things that I am going to have to do as president and all of the ways to do them. I will also say that I also learned very, very, very clearly that I was not to get between Tom and his dessert. That was also a very important part of my education.

Of course, one cannot praise Tom without praising Joy. Joy is one of the most giving and caring people that you could ever want to meet in this world. Throughout Tom's tenure she not only took care of Tom, she also took care of her family, which has now recently been blessed by the addition of twin grandsons, Turner and Sam—you see, Tom, I'm getting their names into the record here, who have been their newest joy.

And Joy has also taken care of the Association. She has managed things from behind the scenes and been incredibly helpful in every respect. To show how much she cares for the Association, she and Marilyn Marwedel have very graciously volunteered to continue that role during my office. I know that I am not only expressing my own thanks here, Joy, but also those of Geoff.

Of course, I would not be in this office if it were not for the incredibly generous help, mentoring and support that I have received from so many distinguished members of this Association. When I was thinking of all the people I had to thank, I realized I would have to keep you here all day, and to name one name would be to slight another person, so I will also say: You know who you are; you have been so very kind to me; I thank you all so very, very much.

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I will, however, single out three people to thank, although it is for their help outside the context of the Association activities.

One of them can't be here today. That's my mother. In the middle of the Great Depression, when my mother was only sixteen, her father died. She was the eldest of six children. She took her clarinet and her saxophone, left her little Illinois farm town behind, and joined a jazz band. She traveled the world, playing jazz, modeling and acting to support her mother and siblings back home. By the middle of World War II, she was a practicing lawyer. She did that without ever becoming bitter, even though in law school she was told directly, "Women should not be lawyers. You have no right being here." Throughout these and other challenges, she maintained a grace and dignity that was so profound that she was memorable to any person who met her even once. So you can see that I had a magnificent example before me, one that is very hard to live up to.

In addition to having an example before you, you sometimes need somebody pushing you from behind. Well, I have had my daughter. I will just tell you one story to illustrate how much Alexis has motivated me to continue in being active in this Association.

When my daughter was seven years old, I was elected Membership Secretary. And shortly after I was elected, I overheard her and a friend talking about a toy, expressing some dissatisfaction. My daughter said, "Why do they have to call it Game Boy? Why can't they call it Game Kid?" Her friend said, "Well, you know, I guess as girls we can't really do all the things that the boys can do." My daughter drew herself up and she said, "My mother is an officer of the Maritime Law Association of the United States—if she can do that, girls can do anything." So I thank Alexis for keeping me on the track whenever I have been tempted to step off.

Finally, the third person I have to thank is a member of this Association, but I want to thank him for his service in a different capacity, and that is as my husband. Geoff has been so generous and giving. You all know how hard it is to have somebody in your family who is not paying attention to you as much as you might wish because they are running off doing this, that, or the other thing. Geoff has not only tolerated that but encouraged me at every turn. Thank you very much.

Now, I have one very, very, very pleasurable task left to me, and that is to present a gift to the Outgoing President of the Association.

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MR. RUE: The Past President.

MS. BURRELL: The Past President, a role that Tom has been very much looking forward to.

So if I may ask you, Phil, to lift that little box up and look behind it, you will find skillfully hidden a very heavy present. Phil has been working out in his garage.

Well, Tom, on this occasion, I present you with this gift. You can take your chance and open it.

MR. RUE: Thank you Liz, but thank you most of all for your kind words and your willingness to follow behind me, and you are going to do a much better job than I did. Notice this is wrapped with seascape paper, which I have never seen before.

MS. BURRELL: Tom is going to display his strength.

MR. RUE: My father always said I had a poor sense of direction, so now that will be forever corrected by this beautiful ship's compass. Thank you very much.

MS. BURRELL: You are very welcome.

I do have one last word of thanks, and that is to each and every one of you for your support and your trust. I really hope that I live up to it during the next couple of years. It is an immense honor that you have bestowed on me. Thank you all so very much.

I believe now it is time to make another motion. Mr. Lord.

MR. LORD: For the last and final time, I move that the meeting be adjourned.

MS. BURRELL: Second?

A VOICE: Second.

MS. BURRELL: All in favor, say, aye.



**FORMAL REPORT OF THE COMMITTEE ON  
CARRIAGE OF GOODS**

At our Committee meeting on May 3, 2006, and at other Committee meetings held that week, there was much debate on the topic of contractual jurisdiction and arbitration provisions that came out of the Sixteenth Session of Working Group III of the United Nation's Commission on International Trade Law (UNCITRAL). There was concern that those provision departed from the policy expressed by the MLA in its 1996 proposal to revise the United States Carriage of Goods by Sea Act.

The subjects of jurisdiction and arbitration clauses in carriage of goods by sea are still open in Working Group III and bear scrutiny by our Association. Hence, for ready reference, we set out below the MLA provisions from 1996 (MLA Doc. No. 724 at 67), committee—drafted bill of 1999 that was not introduced in the U.S. Senate, and the Working Group III provisions.

The commentary that accompanied the proposed COGSA revision, MLA Doc. No. 724 at 31, said that § 3(8)(b) was “part of the commercial compromise between carrier and cargo interests . . . and recommends greater protection for cargo interests than current law provides.” As jurisdiction and arbitration were not specifically addressed in COGSA or the Hague Rules, the following proposed revision of COGSA was, in fact, an addition:

3(8)(b) Any clause, covenant, or agreement made before a claim has arisen that specifies a foreign forum for litigation or arbitration of a dispute governed by this Act shall be null and void and of no effect if:

(i) the port of loading or the port of discharge is or was intended to be in the United States; or

(ii) the place where the goods are received by a carrier or the place where the goods are delivered to a person authorized to receive them is or was intended to be in the United States;

*provided, however,* that if a clause, covenant, or agreement made before a claim has arisen specifies a foreign forum for arbitration of a dispute governed by this Act, then a court, on the timely motion of either party, shall order that arbitration shall proceed in the United States.

The upshot of this is to void foreign jurisdiction and arbitration clauses in contracts for carriage to or from the United States but to allow a court to convert a requirement to arbitrate abroad to one to arbitrate in the United States.

The MLA proposal for a revised COGSA led to drafting a bill for introduction in the United States Senate. Although the bill was never introduced in the Senate, it contained the following foreign forum provision:

Section 7. CONTRACTS OF CARRIAGE

\* \* \*

(i) FOREIGN FORUM PROVISION.—

(1) APPLICATION.—This subsection applies to—

(A) a contract of carriage or other agreement entered into after the date of enactment of this Act governing a claim under this Act; and

(B) a contract of carriage or other agreement entered into before the date of enactment of this Act governing a claim under this Act if the claim arose after that date.

(2) IN GENERAL.—Notwithstanding a provision in a contract of carriage or other agreement to which this subsection applies that specifies a foreign forum for litigation or arbitration of a dispute to which this Act applies, a party to the contract or agreement, at its option, may commence such litigation or arbitration in any appropriate forum in the United States if one or more of the following conditions exists:

(A) The port of loading or the port of discharge is, or was intended to be, in the United States.

(B) The place where the goods are received by a carrier or the place where the goods are delivered to a person authorized to receive them is, or was intended to be, in the United States.

(C) The principal place of business or, in the absence thereof, the habitual residence of the defendant is in the United States.

(D) The place where the contract was made is in the United States.

(E) A forum specified for litigation or arbitration under a provision in the contract of carriage or other agreement is in the United States.

(3) SUBSEQUENT AGREEMENT OF PARTIES.—Nothing in this subsection precludes the parties to a dispute involving a claim under a contract of carriage or other agreement to which this subsection applies from agreeing to resolve the dispute by litigation or arbitration in a foreign forum if that agreement is executed after the claim arises.

(j) NONAPPLICATION TO SERVICE CONTRACTS.—Neither subsection (h) [agreements lessening carrier's liability] nor (i) of this section applies to a provision of a service contract to the extent that the provision affects only the rights and liabilities of the parties who entered into the service contract.

Draft “Carriage of Goods by Sea Act 1999.” This draft expanded the language, but had essentially the same view of forum and arbitration clauses as the MLA Draft. However, based on views expressed from abroad and agreed by the MLA, the provision for a court to convert a foreign arbitration to one to be held in the United States was eliminated.

Different views on arbitration and jurisdiction clauses were expressed in Working Group III: from mandatory enforcement of them to ignoring them in the convention to non-enforcement. Following is the resulting compromise on jurisdiction reached at the Sixteenth Session:

Article 1 (xx) “Competent court”

“Competent court” means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over a matter.

Article 75. Actions against the carrier

Unless the contract of carriage contains an exclusive choice of court agreement that is valid under article 76, the plaintiff has the right to institute judicial proceedings under this Convention against the

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carrier in a competent court within the jurisdiction of which is situated one of the following places:

- (a) The domicile of the defendant; or
- (b) The contractual place of receipt or the contractual place of delivery; or
- (c) The port where the goods are initially loaded on a ship; or the port where the goods are finally discharged from a ship; or
- (d) Any place designated for that purpose in accordance with article 76 (1).

#### Article 76. Choice of court agreements

1. If the shipper and the carrier agree that a competent court has jurisdiction to decide disputes that may arise under this Convention, then that court has non-exclusive jurisdiction, provided that the agreement conferring it is concluded or documented

- (a) in writing;<sup>2</sup> or
- (b) by any other means of communication that renders information accessible so as to be usable for subsequent reference.

2. The jurisdiction of a court chosen in accordance with paragraph 1 is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction

(a) is contained in a volume contract that clearly states the names and addresses of the parties and either

- (i) is individually negotiated; or
- (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies its location within the volume contract; and

(b) clearly states the name and location of the chosen court.

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<sup>2</sup> The form requirement will be treated under article 3.

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3. An exclusive choice of court agreement concluded in accordance with paragraph 2 is binding on a person that is not a party to the volume contract only if this is consistent with applicable law as determined by the [international private law] [conflict of law rules] of the court seized and:

(a) That person is given adequate notice of the court where the action can be brought;

(b) The forum is in one of the places designated in article 75 [(a), (b) or (c)].

4. Subject to paragraph 5, this article does not prevent a Contracting State from giving effect to a choice of court agreement that does not meet the requirements of paragraphs 1, 2, or 3. Such Contracting State must give corresponding notice [to \_\_\_\_\_].

5. Nothing in paragraph 4 or in a choice of court agreement effective under paragraph 4 prevents a court specified in article 75 [(a), (b), (c) or (d)] and situated in a different Contracting State from exercising its jurisdiction over the dispute and deciding the dispute according to this Convention. No choice of court agreement is exclusive with respect to an action [against a carrier] under this Convention except as provided by this article.

\* \* \*

#### Article 81 bis. Recognition and enforcement

1. A decision made by a court of one Contracting State that had jurisdiction under this Convention is to be recognized and enforced in another Contracting State in accordance with the law of the Contracting State where recognition and enforcement are sought.

2. This article does not apply to a decision rendered in another Contracting State that has jurisdiction under article 76 (4).

Other provisions deal with actions against performing parties, arrests, consolidation of actions, but are not reprinted here. The concerns expressed are principally based on the provisions in article 76.4, 76.5, and 81.2.

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Working Group III also considered arbitration, which would add a new chapter to the draft convention using the following text:

Article 83. Arbitration agreements

Subject to article 85, if a contract of carriage subject to this Convention includes an arbitration agreement, the following provisions apply:

(a) The person asserting a claim against the carrier has the option of either:

(i) commencing arbitral proceedings pursuant to the terms of the arbitration agreement in a place specified therein, or

(ii) instituting court proceedings in any other place, provided such place is specified in article 75 (a), (b) or (c);

(b) If a person asserts a claim against a carrier, then the carrier may demand arbitration proceedings pursuant to the terms of the arbitration agreement only if that person institutes court proceedings in

(i) a place specified in the arbitration agreement; or

(ii) a court that would give effect under article 76 to an exclusive choice of court agreement specifying the place named in the arbitration agreement that is exclusive with respect to the action against the carrier.

Article 84. Arbitration agreement in non-liner transportation

Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Convention or the terms of this Convention apply by reason of:

(a) the application of article 10,<sup>3</sup> or

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<sup>3</sup> The reference might be modified depending on the future revision of draft article 10 of the draft convention.

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(b) the parties' voluntary incorporation of this Convention as a contractual term of a contract of carriage that would not otherwise be subject to this Convention.

Article 85. Agreements for arbitration after the dispute has arisen

Notwithstanding the provision of this chapter and chapter 16, after a dispute has arisen, the parties to the dispute may agree to resolve it by arbitration in any place.

These and the jurisdiction provisions are taken from the "Report of Working Group III (Transport Law) on the work of its sixteenth session (Vienna 28 November–9 December 2005," A/CN.9/591 (4 January 2006). The subjects of jurisdiction and arbitration are on the agenda for the November 2006 session of Working Group III. We do not know whether any substantive changes can be made to the compromise reached at the Sixteenth Session.

Respectfully submitted,  
Donald C. Greenman, Chair

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

The Committee held a very well-attended meeting on May 3, 2006, at the Wall Street offices of CNA Insurance, for whose hospitality we are most grateful. The Subcommittee meetings were held as an integral part of the main meeting.

Committee Vice Chairman, Gene George of Cleveland, gave an update on his continuing study of the insurance fall-out from hurricanes Katrina and Rita and the types of litigation that have been spawned by them. He touched on the difficulties for homeowners of differentiating between wind damage, which is a covered peril under a standard homeowner's policy, and flood damage, which is not. A member from New Orleans confirmed that this is a problem of some magnitude. Gene summarized his continuing statistical review as it pertains to insurers' profitability and the impact on insurance premiums nationwide.

General Average Subcommittee Chairman Jonathan Spencer, of New York, had no developments to report in the world of General Average. He

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requested a few minutes of the Committee's time to acknowledge the life of fellow average adjuster Howard Myerson, who had been an energetic member of the Marine Insurance Committee and who died in New York on March 12, 2006. Born in Chicago on December 18, 1929, Howard was a graduate of the University of Chicago (Class of 1950) and served in the US Army before joining the Chicago office of The Hartford Insurance Company. After taking evening classes in admiralty law, Howard became interested in average adjusting and joined Despard & Company. In the early 1960s, he took up an opportunity to work for ER Lindley in London, broadening his experience from Great Lakes practice into blue water and international claims. He returned to the US to take up a position in New York with Despard, which later merged into Fred S. James. Subsequently, he joined Johnson & Higgins, retiring from that firm in the mid-1980s.

Howard always valued his ties with his English colleagues and this was reflected in ER Lindley's inviting him to become their US representative when he left J&H. When ER Lindley later took over Richards Hogg, Howard continued to serve the newly-formed Richards Hogg Lindley in a consulting capacity.

Besides our own Association, Howard was a tireless and hard-working member of the Association of Average Adjusters of the United States, which he served as Chairman in 1995–1996 and of AIDE. He worked extensively on the 1994 revision of the York Antwerp Rules, particularly the 1994 revision, both as a member of the MLA's *ad hoc* committee on the changes and as a US delegate to the CMI conference in Sydney. As Chairman of the Association of Average Adjusters he gave a characteristically scholarly address titled "The American Experience at Sydney: Some Reflections on the York-Antwerp Rules, 1994."

Next, Hull and P&I Subcommittee Chairman John M. Woods brought up further discussion of Hurricane Katrina, describing a class action suit that has been brought against the United States and various dredging companies alleging that dredging activities in the Mississippi Delta going back as far as the 1960s contributed to a loss of wetlands which, in turn, contributed to a loss of natural protection leading to an increase in the storm surge and the breaching of the levees.

Mr. Woods went on to report that the hull policy annotation project remained on the back burner and might now have been superseded by the AIMU technical committee's review of the American Institute Hull Clauses in the context of its modernization project, which is addressing various



aspects of that policy's wording, under the chairmanship of Fred Robertie, President and CEO of the American Hull Insurance Syndicate. The work includes, *inter alia*, a review of the wording of the deductible and Inchmaree provisions of the existing clauses and the desirability of introducing an additional machinery damage deductible, general average absorption provisions, and lead underwriter wording.

George Zacharkow of Philadelphia, Cargo Subcommittee Chairman, spoke next about some recent decisions involving warehouse losses that had come to his attention: *North American Foreign Trading Corp. v. Mitsui Sumitomo Insurance USA, Inc.*, 413 F. Supp. 2d 295 (S.D.N.Y. 2006). The case involved a claim under an open cargo policy for the mysterious disappearance of telephones from a warehouse in China, where the importer had shipped telephones back to the manufacturer for reconditioning; the insurer denied coverage on basis that coverage under the American Institute Shore Clause was for named perils (not all risks) and that mysterious disappearance was not an included peril; the court analyzed the interplay between the Shore Clause and the Special Warehouse Endorsement and held that there was coverage under the Warehouse Endorsement (all risks) and that the insured did not have to prove cause of loss.); *Royal Insurance Company of America v. K.S.I. Trading Corporation*, 2006 U.S. Dist. LEXIS 8152 (D.N.J. 2006), involving a claim under an Open Cargo Policy for the loss of auto parts in a warehouse fire; the insurer disclaimed coverage for parts that were purchased from domestic suppliers on the basis that coverage was afforded only for goods originating overseas; the court construed the coverage provisions and concluded that domestically originating shipments were expressly excluded. Mr. Zacharkow also noted several recent decisions addressing the doctrine of *uberrimae fidei*; *Chambers v. Joshua Marine, Inc.*, 430 F.Supp.2d 580, 206 AMC 1796 (E.D.La. 2006); *Royal v. Deep Sea International*, 2006 U.S. Dist. LEXIS 18992 (S.D.N.Y. 2006); *Liberty International Underwriters v. Carlson*, 206 AMC 1140, 2006 U.S. Dist. LEXIS 14045 (W.D. Wash. 2006).

Mr. Zacharkow updated the Committee on the progress of the all risks annotation, homogenization of which continues as one of the few remaining prerequisites to publication.

The Committee then turned its attention to our guest speaker. Continuing our "The Business of" series, Mr. Joseph E. M. Hughes, Chairman and CEO of Shipowners Claims Bureau, Inc., spoke about the business of protection and indemnity clubs with particular emphasis on the American Club, which SCB manages. Mr. Hughes began by describing the philosophy of mutuality and how the Club managers emphasize service rather than mere

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coverage, then gave a history of the American Club's development from its origins in 1917, when all the entered tonnage was US-domiciled, through to the present day, with some 22,000,000 entered tons domiciled 63% in Europe, 17% in Asia, 16% in the U.S. and 4% in the rest of the world.

Mr. Hughes went on to describe the P&I structure worldwide, emphasizing the cooperation between the seventeen clubs that are members of the international group, which he characterized as a "close-knit group of friendly rivals", emphasizing the cooperation among them in technical matters.

He touched on the clubs' deepening involvement in loss prevention. Whereas in the past this rarely extended beyond a condition survey when a vessel was first entered in the club, SCB now has a dedicated loss prevention department that is conducting hundreds of surveys every year and employs people specialized in ship management and surveying. They also develop printed materials for use in training and education on board ship.

The American Club is active in conducting pre-employment medical exams as a means to loss prevention and, with a further eye on cost containment, has vetted and approved various medical facilities in locations such as the Philippines, Ukraine, Latvia, and elsewhere.

Mr. Hughes described the increasingly complex regulatory environment in which the American Club operates, being subject to oversight by the New York State insurance Department but also impacted by the Financial Services Act in England and the anti-competition provisions of the Treaty of Rome. He discussed the activities of clubs that have operated in the past outside the international group, and the role of fixed premium P&I insurers, then went on to describe the various layers of the pooling and reinsurance arrangements of the members of the International Group. Looking forward, Mr. Hughes foresaw the increasing impact on the Club of developments such as the growing politicization of marine pollution and the imposition on ship's crews of criminal liability for pure accidents. This was of most particular concern when poor jurisdictional standards continue to prevail in certain regions of the world.

He turned next to recent loss experience and explained how average value of cargo claims has been increasing with rising commodities and how the expenses of dealing with stowaway claims has been increasing from year to year. This has meant that the American Club is seeing an uplift in claims resulting from typical attritional losses.

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Balanced against this is the effect on a club's income of the so-called "churn" effect when older tonnage is replaced by newer tonnage, with newbuildings playing very low rates of premium so that the club can lose approximately 7%-10% of its essential rate per ton during the course of the underwriting year.

Finally, Mr. Hughes in response to questions from committee members touched on the latest challenges facing the clubs, including the effect of the Athens Convention on the liabilities of passenger vessel operators and the implications of the assumption by shipowners of terrorism risks.

The meeting concluded with the distribution of the Committee's Spring 2006 newsletter led by an authoritative article by Hal Watson of Houston on the contra proferentem doctrine in marine insurance.

Respectfully submitted,  
Jonathan S. Spencer

## **FORMAL REPORT OF THE COMMITTEE ON MARINE TORTS AND CASUALTIES**

### **The Supreme Court**

The Supreme Court granted certiorari on May 15, 2006 in a FELA railroad case that also involves the Jones Act. The case is *Norfolk So. Ry. V. Sorrell*, No. 05-746. At issue is the causation standard for employee contributory negligence. *Tiller v. Atlantic Coast R. Co.*, 318 U.S. 54 (1943), puts the burden on the defendant to prove that plaintiff did not exercise slight care for his own safety.

The Supreme Court declined certiorari in a case in which the Second Circuit held that the Pennsylvania Rule did not apply to a Jones Act seaman's claim that his cancer was caused by his exposure to toxic chemicals. Plaintiff's widow claimed a violation of Coast Guard regulations governing exposure to benzene. The Appellate Court had found a causation problem. *Willis v. Amerada Hess Corp.*, 379 F.3d (2d Cir. 2004), *cert. denied*, 126 S. Ct. 355 (2005).

Claimant's Longshore Act attorney sought an award for costs in successfully opposing a certiorari petition filed by the employer. The Ninth Cir-

cuit held that it could not award costs for services rendered in another court. *Stevedoring Services of America v. Price*, 432 F.3d 1112 (9th Cir. 2006).

The Supreme Court adopted a rule allowing lawyers to cite unpublished opinions in federal court starting in 2007. The historic new rule, adopted April 12, 2006, takes effect unless Congress countermands it before December 1, 2006. Unpublished or banned opinions save a court's time, but they resolve over 80 per cent of appeals. (N.Y. Law Journal, April 13, 2006).

### **The Asbestos Bill**

In February the Senate killed or mortally wounded the legislation to create a \$140 billion fund to compensate asbestos victims. Powerful interests overcame partisan positions. (N.Y. Times 2/15/06). The proposed fund was to consist of contributions by insurance companies and asbestos providers. Newspaper reports indicated that lobbyists spent over \$100 million although the fund would cost billions.

### **The Jones Act**

The Ninth Circuit has repeated that violation of a Coast Guard regulation results in absolute liability. Even the slightest violation triggers liability and the regulation need not apply to the activity at hand. *MacDonald v. Kabikolu, Ltd.*, 442 F.3d 1199 (9th Cir. 2006). Plaintiff did a free dive to retrieve a mooring line. Failure to have a diving operation manual for scuba diving was enough. Plaintiff need not be an intended beneficiary of the regulation.

A different result was the decision of *Horton v. Andrie, Inc.* 408 F. Supp.2d 477 (W.D.Mich. 2005). There the court held a Coast Guard regulation that applied to passenger vessels (handrails on stairways) would not apply to an inspected tank barge. Also, OSHA regulations would not apply to an inspected vessel.

The Jones Act does not apply to a welder injured on a vessel laid up for the winter. In addition, his connection was infrequent and unsubstantial. He was covered for Longshore Act compensation but did not qualify for 905(b) negligence suit. *James v. Wards Cove Packaging Co.*, 409 F. Supp.2d 1252 (W.D. Wash. 2006).

### **Vessel Status**

The Fifth Circuit had a case involving a seaman's dormitory following the *Stewart* Supreme Court case. Initially, the Supreme Court held it was not

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a vessel, but later it withdrew the opinion and held the plaintiff to be a Jones Act seaman. "Vessel" is to be liberally construed. *Homes v. Atlantic Sounding*, 437 F.3d 441 (5th Cir. 2006).

In another case following the *Stewart* decision, plaintiff worked the full day on a cleaning barge except for being ferried to and from it. The barge had all types of equipment aboard and was moored by spud poles and could not move by itself. On appeal, the court held the barge to be a vessel. Suit was under the Jones Act. *Bunch v. Canton Marine Towing Co.*, 419 F.3d 868 (8th Cir. 2005).

### **Open and Obvious/Maintenance and Cure**

The Fifth Circuit held that a shipowner under the Jones Act need only warn of dangers not reasonably known, not those that are open and obvious. An accident occurred on a wet stairway previously used. *Patterson v. Allseas USA*, 133 Fed. Appx. 633 (5th Cir. 2005).

In a later decision in the same case, the employer sought to recover maintenance and cure payments from the plaintiff, alleging a failure to report a prior medical condition. Recovery was denied, as the employer failed to prove that it would not have hired plaintiff if it had known of the medical condition. Plaintiff had unique skills. *Patterson v. Allseas USA*, 145 Fed. Appx. 969 (5th Cir. 2005).

However, if the hazard is unavoidable, it is not a complete defense. *Prinski v. Blue Star Line*, 341 F. Supp.2d 54, 2005 A.M.C. 425 (E.D. Pa. 2004).

### **The Shore Leave Problem**

Most shore leave detentions for non-Americans result from lack of a U.S. visa. The I.L.O. has proposed a seafarers' identity document convention to establish a universal seafarer's identity document. The Seamen's Church Institute is pushing the I.L.O. proposal.

### **Statutory Death Claims**

Punitive and other non-pecuniary death damages were held not recoverable under both the Jones Act and DOHSA. *In re Offshore Transport Svces*, 409 F. Supp.2d 753 (E.D. La. 2005).

In the event of death in state waters, the general maritime law applied for non-Jones Act employees. *Miles* is to be applied narrowly, and punitive

damages are available. *Rebardi v. Crewboats, Inc.*, 906 So.2d 579, 2005 A.M.C. 1272 (La. App. 1st Cir., 2005).

### **DOHSA**

A bill has been introduced to make soft damages recoverable in commercial maritime deaths similar to the clause applicable in DOHSA to commercial aviation accidents. It would add the words "or maritime" after the present wording involving "commercial aviation." H.R. 4921.

### **Suits in Admiralty Act**

As a follow-up to a discussion of the Fourth Circuit case of *McMellon v. U.S.*, in our last report, the case allows a defense of the discretionary function exception (DFE) just like all other circuits dealing with the SAA. When the case came back to the district court, the judge held that the DFE did not apply. The case involved a boat going over a hidden dam where the warning signs were inadequate. *McMellon v. U.S.*, 432 F. Supp.2d 422 (D.W.Va. 2005).

A similar case involving a jet-ski denied the DFE defense. *Bagner v. U.S.*, 428 F. Supp.2d 101, 2006 A.M.C. 1624 (N.D.N.Y. 2006).

The DFE was upheld in a case involving injury on a buoy that had sunk below the surface due to high water. Plaintiff was floating in an inner tube. *Harrell v. U.S.*, 443 F.3d 1231 (10th Cir. 2006). The basis of the DFE was explained at length.

The DFE applies to the layout of a fan room where plaintiff was injured but was not a defense in a claim of negligence by the chief engineer. *Carney v. U.S.*, 368 F. Supp.2d 439, 2005 A.M.C. 1443 (D. Md. 2005).

Equitable tolling can apply in the SAA, but in the case at bar the plaintiff was held to the applicable limitations despite a claim that plaintiff was misled to follow the Federal Tort Claims Act, not the SAA. *Hedges v. U.S.*, 404 F.3d 744 (3d. Cir. 2005)

### **Public Vessels Act**

In a case where a naval vessel is involved, or for a vessel owned by the United States, suit is under the Public Vessels Act, and the U.S. is the proper party to be sued if operated by a private company acting as agent

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of the U.S. *Arthur v. Maersk, Inc.*, 434 F.3d 196 (3d. Cir. 2005) (late amendment allowed).

Another case held that if an agent of the U.S. is involved, suit is only against the U.S. *Len v. American Overseas Marine Corp.*, (5th Cir. 2006) No. 05-30662. See also: *Taghadomi v. U.S.*, 401 F.3d 1080 (9th Cir. 2004) (Coast Guard negligence in rescue operation); sue under the proper act.

### **Longshoremen's Cases**

A shipowner's turnover duty is explained at length in *Hill v. Reederei*, 435 F.3d 404 (3rd Cir. 2006), which held in favor of the plaintiff and that the district court charge was incorrect, especially as to superseding cause. A petition for rehearing has been filed. See also, *Lincoln v. Reksten Management*, 2004 AMC 179 (4th Cir. 2003) (turnover duty).

In an action against a shipowner alleging crew member negligence in handling a mooring line, the plaintiff longshoreman created issues of fact. *Paparo v. M/V ETERNITY*, 433 F.3d 169 (1st Cir. 2006).

The Virginia Supreme Court decided that longshoremen employed by different stevedores may sue even though all worked at the same terminal. *Hudson v. Jarrett*, 269 Va. 24, 606 E.2d 827 (2005).

Although there is a presumption under the Act of causation for a claimed injury, the presumption can be rebutted. The Fifth Circuit Court of Appeals upheld the BRB order against the claimant. He had a long history of back problems and did not report an accident until about two weeks after his job was terminated. *Bayou Fleet v. Durant*, 158 Fed. Appx. 611 (5th Cir. 2005).

A longshoreman who was injured at work but not being paid compensation was held not to have to report his outside earnings. *Delaware River Stevedores v. DiFiedelto*, 440 F.3d 615 (3rd Cir. 2006)

### **Cruise Line Liability**

The recent cases involving loss of life and cruise ships as occasioned many articles concerning the present criminal laws and the reporting of crime on foreign flag cruise ships. Present law involves "special maritime and territorial jurisdiction" of the U.S. 18 U.S.C. § 7. There may be Congressional action to strengthen and clarify present law. Hearings have been held.

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An Illinois appellate court held that a cruise line may be vicariously liable for the malpractice of a ship's doctor. Passengers have no choice and the shipowner benefits from a doctor's presence. *Mack v. Royal Caribbean Cruises*, 838 N.E. 2d 80 (Ill. App. Ct. 2005).

In accord as to vicarious liability, based on agency principles. *Doonan v. Carnival Corp.*, 404 F. Supp.2d 1367 (S.D.Fla. 2005).

### ***Forum Non Conveniens***

The Third Circuit requires that a district court find it has jurisdiction before dismissing on FNC basis. The Second Circuit has no such requirement. *Malaysia Intern. Shipping v. Sinochem Co.*, 431 F.3d 349 (3rd Cir. 2006).

### **Nationwide Contacts Jurisdiction**

There is a nationwide jurisdiction providing jurisdiction in any state where a defendant does business in the U.S. but not primarily in any one state. Federal Rule of Civil Procedure 4(k)(2). If defendant does not concede it is active in a particular state, the rule will apply if constitutional standards are applicable. *Mwani v. Osama Bin Laden*, 417 F.3d 1, (D.C.Cir. 2005). But there must be an ongoing presence in the U.S. *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271 (4th Cir. 2005).

### **May a Plaintiff's Attorney Approach Employees of the Defendant?**

Various states have ethical rules preventing such solicitations. In the Federal Employees Liability Act (FELA), and thus the Jones Act, Sec. 60 allows the *ex parte* solicitation of voluntary statements. In *Groppo v. Zappa, Inc.*, 2005 A.M.C. 1379 (Ma. 2005), the FELA rule did not take precedence over the ethics rule, but no sanctions were applied because of counsel's good faith reliance on FELA/Jones Act rule. The FELA rule took precedence in the Second Circuit. Ethics rules would apply in the Fourth and Fifth Circuits.

### **Criminal Law**

In *U.S. v. O'Keefe*, 426 F.3d 274 (5th Cir. 2005), the captain of a tugboat that capsized was convicted under the statute. The court held that shore-side manslaughter requirements need not be met under the federal statute. Gross negligence or the heat of passion were not required to be proven for a conviction.



The Supreme Court of Alaska ruled that it had criminal jurisdiction over a defendant accused of a sexual assault on an Alaskan ferry while in Canadian waters. The crime had a significant effect on Alaska due to the importance of its ferry system. *State v. Jack*, 125 P.3d 311 (Alaska 2005).

### **Maintenance and Cure/Punitive Damages**

A punitive damages claim was allowed for an arbitrary denial of maintenance and cure in a Florida district court. *Atlantic Sounding Co. v. Townsend*, 2006 WL1000310 (M.D. Fla. 2006). The district court judge held that the controlling law in the 11th Circuit is *Hines v. J.A. Laporte*, 820 F.2d 1187, 1189 (11th Cir. 1987) and that the Fifth Circuit rule against punitives would not be followed. *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995). Also cited in favor was *In re Amtrak Sunset Ltd.*, 121 F.3d 142 (11th Cir. 1997), writing approvingly of the *Hines* case.

### **Limitation of Liability**

Plaintiff filed suit against barge owner and its sole shareholder in state court. Plaintiff did not know the name of the barge owner, so sued a fictitious name and served the shareholder. Approximately one year later, plaintiff amended his complaint to name and serve the barge owner, P.G. Charter Boats. The owner filed a petition to limit his liability within six months of the amended complaint, but more than a year after the sole shareholder was served with the original complaint. Plaintiff moved to dismiss the limitation action, arguing that it was filed out of time. The court agreed, holding that the six months began to run when the shareholder was served, and not when the correct party was named since the owner had actual notice of the claim via its shareholder. *In re P.G. Charter Boats, Inc.*, 385 F. Supp. 2948 (S.D. Alabama 2005).

In a case involving personal injuries and death, it was within the district court's discretion to deny late claims which were filed shortly before the discovery deadline and after the vessel owner had already settled with other claimants. Therefore even though it was a harsh result, the Fifth Circuit found that claimants did not meet the heavy burden of showing that the district court abused its discretion. *In re Trace Marine, Inc.*, 114 Fed. Appx. 124 (5th Cir. 2005).

Barge under tow collided with an unmanned platform in the Gulf of Mexico, damaging the platform and cargo onboard the barge. The platform owner filed a suit *in rem*, the barge and tug were arrested and later released

upon issuance of a letter of undertaking by the P&I Club. The tug and barge owner later answered the complaint, asserting the Limitation of Liability Act as an affirmative defense. Subsequently, the owner filed a limitation action, but did not post any new security, instead convincing the court to accept the letter of undertaking that had been posted in the *in rem* action. On motion of the platform owner, the court reconsidered that decision, and ordered the limitation plaintiff to post new security in the second action. In doing so, however, the court pointed out that, if successful in limiting its liability, the tug and barge owner would not face any exposure in excess of the limitation fund, notwithstanding the earlier letter of undertaking issued to the platform owner. *El Paso Production Gom, Inc. v. Smith*, 2005 A.M.C. 2932 (E.D.La. 2005).

In a single-claimant, inadequate fund case, the claimant was not required to agree to the adequacy of the limitation fund in order to have his claim determined in state court. As long as the claimant agreed that the federal court had exclusive jurisdiction over the limitation and fund valuation issues, he was entitled to have the liability question and amount of damages, if any, determined by a state court jury. If necessary, the case would then revert to the federal court in order to determine the limitation and adequacy of the fund issues. *Norfolk Dredging Co. v. Wiley*, 439 F.3d 205 (4th Cir. 2006).

A plaintiff appealed the district court's decision allowing the tug owner to limit his liability to the value of the tugboat, holding that the plaintiff only proved that the allision was caused by the fact that the tug's captain fell asleep, and had not proven why he had done so. The Ninth Circuit reversed, holding that once the plaintiff established the cause of the accident, it was the vessel owner's burden to show that the reason that the Captain had fallen asleep was outside of its privity or knowledge. *Washington State Dept. Transp. v. Sea Coast Towing, Inc.*, 148 Fed. Appx. 612 (9th Cir. 2005).

An intoxicated passenger on a river cruise jumped overboard and drowned, triggering a limitation action filed by the vessel owner. Both parties filed summary judgment motions, and the claimant argued that the vessel owner was negligent *per se* because it did not have the required number of deckhands on duty during the voyage in question, thereby invoking the Pennsylvania Rule. The vessel owner argued that there were two qualified deckhands on board, thereby satisfying the Coast Guard requirement even though one of the deckhands was working in a food service capacity that night. The court rejected this position, finding that the owner could not prove that the accident was not caused by the failure to have two deck-

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hands. As this fact was within the privity and knowledge of the owner, the court granted summary judgment to the claimant, and denied limitation as a matter of law. *In re Clinton River Cruise Co.*, 2005 A.M.C. 2728 (E.D.Mi. 2005).

The owners of a yacht sought to limit their liability for damages to other boats and property when their vessel caught fire while docked at a marina. The court properly held that the claimants bore the initial burden of persuasion *vis-à-vis* negligence, after which the burden then shifted to the vessel owner to prove its lack of privity and knowledge of that negligence. Because the fire was caused by improper electrical modifications made by the individual vessel owner, the limitation plaintiffs had not hope of limiting their liability. *In re Rboten*, 397 F. Supp.2d 151 (D.Mass. 2005).

Respectfully submitted,  
John P. Schaffer, Chair

#### **FORMAL REPORT OF THE COMMITTEE ON REGULATION OF VESSEL OPERATIONS**

The spring meeting of the Committee on Regulation of Vessel Operations was held beginning at 4:00 p.m. on May 3, 2006 at the offices of Holland & Knight LLP in New York. Fifty-three committee members and/or guests attended.

The meeting, under the guidance of Chairman Dennis Bryant, began with the introduction of Rear Admiral William Baumgartner, Chief Counsel and Judge Advocate General for the U.S. Coast Guard, who addressed numerous issues pertaining to IMO and Coast Guard activities. Admiral Baumgartner had just returned from an IMO meeting in Europe, at which the Wreck Removal Convention, the Athens Convention, and the issue of treatment of seafarers were principal subjects of discussion. As to the Wreck Removal Convention, it is now scheduled for a diplomatic conference. The primary issue of the new Convention is wreck removal in the EEZ, which fills a gap in current conventions. The countries of northern Europe are most concerned about this particular issue. One of the more controversial provisions is the concept of compulsory insurance to cover wreck removal if the coastal state demands it. As to the Athens Convention, the discussion at IMO centered around limitation of liability to passengers in consideration of the threat of terrorism. The convention participants are concerned about how terrorism issues affect carriers' liability given the strict liability provisions of the

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existing convention. Admiral Baumgartner noted that the Athens Convention has not yet been ratified by any nations. As to the fair treatment of seafarers, several specific issues are under discussion. First, there is concern about criminal liability following marine casualties and the process and procedure that ought to be uniformly followed. Admiral Baumgartner noted that the guidelines do not apply to intentional criminal acts. There is also concern about wages and repatriation standards for seafarers put ashore in foreign ports. Admiral Baumgartner noted that places of refuge is a continuing topic of discussion. In the United States, the Coast Guard considers, in accordance with existing laws and regulations, requests for admission by vessels in distress.

As to U.S. Coast Guard developments, Admiral Baumgartner began with a brief mention of the issue of the Coast Guard's reassessment of passenger weights for passenger vessel ratings. For many years, the Coast Guard has used 140 pounds as the average weight of a person such that a weight limitation of 2,800 pounds on a particular vessel would translate to a maximum load of twenty passengers. However, in this "super size me" era, the Coast Guard recognizes that 140 pounds no longer approximates the average weight of an American. They are shifting the standard to 180 pounds. While the Coast Guard hopes to promulgate a regulation as soon as possible, they are encouraging voluntary compliance. The Coast Guard is also in the middle of the Transportation Worker Identification Credential issue. The Department of Homeland Security is pushing hard to finalize the "TWIC," and the Transportation Safety Administration is a major player. It is expected that a notice of proposed rulemaking will be coming out in the next few weeks. The TWIC is not really integrated as of yet with the Coast Guard's merchant mariner documentation. As a distinct program, the Coast Guard's has issued guidelines recently regarding suitable identification for unescorted access to waterfront facilities. These guidelines are designed to allow screening of visitors against the terrorist database maintained by TSA. Much depends upon the facility security plan in place under MTSA. Interestingly, long-time employees of a facility need to have their names vetted against the TSA list, but one-time only visitors need only show a state drivers' license.

Finally, the Admiral addressed the Coast Guard Authorization Act, which he expects to pass eventually, but a controversial provision pertaining to the wind farm in Nantucket Sound is an obstacle.

The next speaker on the agenda was Ms. Amy Larson, Chief Counsel for the Federal Maritime Commission. Ms. Larson indicated that the FMC was pleased with the unanimous Supreme Court decision in the *Chatham County*

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case, which determined that municipalities do not have sovereign immunity rights. This helps the FMC in dealing with private complaints that are filed against municipalities that own or operate waterfront terminals. Another issue that the FMC is dealing with is antitrust immunity. The EU is looking to repeal the block antitrust exemption so that after December 2006, carriers will have to follow Department of Justice-like antitrust guidelines. Australia, the United States (at least the FMC), and Japan oppose this repeal. The basis of their opposition is that the block exemption has a way of unifying the rules to which liner operators are subject. They do not have the problem that their activities might be legal under U.S. law, but illegal under the law of some other country. The U.S. Department of Justice has a working group (called the Antitrust Modernization Committee) underway. The FMC is concerned with the effect that any new DOJ standards would have upon interpretation of the Shipping Act. Ms. Larson mentioned that the Consultative Shipping Group, consisting of representatives of some 14 countries primarily from Scandinavia, Northern Europe, and the Far East, was scheduled to meet at the FMC in Washington, DC during the week of May 8th to discuss competition policy.

Recent FMC action included a south Florida case regarding household good carriers. There were numerous individual private complaints against this one particular carrier. The FMC has an investigation underway regarding legal compliance. The second FMC action involved NVOCC Service Arrangements (NSAs). Ms. Larson mentioned that at least 200 such NSAs have been filed so far.

Bruce Paulsen, a Committee member and Chairman of the Subcommittee on Maritime Security was next to speak. He mentioned the fact that although there have been numerous political developments with regard to maritime security, he is not aware of any substantial legal work that has been generated by the MTSA. He drew the Committee's attention to an article by Lucienne Bulow in the *Journal of Maritime Law and Commerce* regarding the security impacts on charter party arbitration. Finally, Mr. Paulsen asked whether or not the committee felt that a separate subcommittee on maritime security was necessary. At this point a Committee member, Skip Volkle of Tampa, Florida, made the point that there are a lot of security developments on the state level in Florida involving terminal and port access. There are different security passes necessary for each Florida port and there is a movement afoot to unify the system.

Member Larry Kiern of Washington, DC addressed the subject of the Committee on Foreign Investment in the United States (CFIUS), which came

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to prominence recently with respect to the Dubai Ports World purchase of P&O Ports, thus acquiring an interest in various U.S. port terminals. CFIUS was formed under a cold war executive order based upon a concern at the time that U.S. technology was being exported to foreign companies. CFIUS is a multi-agency committee that in accordance with 1988 legislation came under congressional oversight. The existing legislation is somewhat dated, being based upon cold war era risk factors. A 1992 amendment to the statute expanded the reach and used the word "terrorism" for the first time but still the primary focus was the transfer of technology to foreign entities. (The particular problem addressed by the 1992 amendment was the acquisition of missiles by Libya). It is clear that the statute needs post-9/11 updating. There have been lots of proposals, some good and some bad, but the largest hurdle is an internal Congressional fight over committee jurisdiction. It is likely that there will be citizenship triggers similar to the Jones Act and possible restrictions on ownership by foreign governments. Under the current law, parties must notify the government of the intention for a foreign entity to acquire U.S. assets. If the government takes no action within 30 days, the transaction will be cleared, but if no notice is ever given, there is a possibility that the transaction can be unwound by the President. In 30 years under the current program, there have been 1500 notifications to the government, but only 25 deals were scrutinized at any level, and only one deal was ever disapproved. The benefit of the CFIUS program is that they can work with you to condition a deal that would be approvable.

Ms. Barbara Burke of Washington handed out summaries of pending legislation. She limited her remarks to a mention that the Coast Guard Authorization Act is now in conference committee. One of the issues pertains to raising the limitations of liability under the Oil Pollution Act. The new limits will be effective 90 days after the passage of the bill, which presents a potential problem with respect to the issuance of certificates of financial responsibility.

Member Dave Dickman gave his presentation on the latest developments in criminal liability in the maritime industry. The Committee is continually amazed at the number of prosecutions of both individuals and corporations pertaining to falsifications of Oil Record Books. Dave cited no fewer than ten recent cases where prosecutions and plea agreements were reached with respect to the installation and use of oil/water separator bypass piping, which inevitably led to unrecorded discharges. Dave mentioned that on the Coast Guard's "M" website there is a Coast Guard policy letter explaining the manner in which the Coast Guard will conduct inspections of oil/water separators. A word to the wise should be sufficient. Finally, Dave

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discussed the infamous "Thompson Memo" of the Department of Justice, which suggests that companies may avoid prosecution if they cooperate with the government, which cooperation could entail the waiver of attorney-client privilege. The memo also talks about how such cooperation may allow a recommendation of leniency at the sentencing phase. The definition of cooperation is now expanded to impinge upon the corporate practice of underwriting the legal fees incurred by its employees. Prosecutors may ask the corporations not to pay the attorneys fees for any employee who doesn't cooperate with those prosecutors. This is problematic, because some state laws require the payment of such fees. In a case involving KPMG, prosecutors asked KPMG to impose a cap on the payment of attorneys' fees for employees, but counsel for the employees filed a motion to oppose this, which motion is presently under consideration.

Chairman Bryant then addressed various hot issues. The first was ballast water management. Chairman Bryant noted that California is pushing the passage of a regulation that says that as of 2015 no living matter can be in ballast water. This is problematic, because as of the current date, there is absolutely no technology in existence which could test the ballast water and assure that no living matter is in it. Chairman Bryant also discussed non-tank vessel oil spill response plans that, under the 2004 statute, was a self-executing requirement, but the Coast Guard has not yet gotten around to issuing regulations. Chairman Bryant also mentioned the avian flu, which is much in the news of late. Under the recent White House Task Force Report talking about contingency plans for the avian flu, there is much that may have an impact upon marine industry, including travel control and quarantine. Finally, the Title 46 recodification passed the House recently and is now in Senate Judiciary Committee. Apparently, a committee staffer is busy collecting committee member signoffs, and the bill should be brought up for a vote soon.

Respectfully submitted,  
Dennis L. Bryant, Chair

**FORMAL REPORT OF THE REPRESENTATIVE OF THE  
MARITIME LAW ASSOCIATION OF THE UNITED STATES TO  
THE AMERICAN BAR ASSOCIATION HOUSE OF DELEGATES**

The ABA Mid-Year meeting was held in Chicago, Illinois, having been moved from the prearranged meeting in New Orleans.

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The major matters were as follows:

1. Report 104A—Uniform Foreign-Country Money Judgments Recognition Act. This sought approval of the Uniform Law Commissioners 205 Amendment to the 1962 Uniform Act. It is an improvement.
2. Pro Bono Report 105. There is no substantial change in my understanding of this report and is in keeping with our MLA Code of Conduct.
3. Trial and Insurance Practice Section Report 106A. This expresses support for administrative procedure to replace state and federal jurisdiction over asbestos related injuries. There is nothing in the report that mentions Jones Act or other maritime matters.
4. Immigration Report 107. Nothing has been added here to impact vessel detainees or other day-to-day admiralty matters.
5. Report 108A. Report 108A urges the United States Congress to 1) create and appropriate funds for a Commission to study and make findings relating to the present day social, political, and economic consequences of both slavery and the denial thereafter of equal justice under law for persons of African descent living in the United States; and 2) authorize the Commission to propose public policies or governmental actions, if any, that may be appropriate to address such consequences. Nothing contained therein relates to the maritime world.
6. Report 110. The ABA urges the adoption by states of a uniform law that would permit the federal practice under 28 U.S.C. § 1746 to be followed permitting unsworn declarations under penalty of perjury to be executed by persons located outside the United States in lieu of affidavits, verifications or other sworn documents.
7. Report 112. Report 112 urges the Attorney General of the United States to issue a memorandum to the Freedom of Information Act official clarifying the designation of agency records as “sensitive but unclassified” cannot be used as a basis for withholding agency documents. I urge that I vote for this. (See Attachment 7).

I voted on six of the seven items listed above. I voted yes on all except 108A and abstained thereon. All were passed. There were minor amendments to some of them but nothing of major impact.



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The agenda was quite lengthy, some thirteen pages, but the two most significant factors were tremendous presentations. A good deal of time was spent in the Monday morning presentation of the effects of hurricanes Katrina and Rita on the administration of justice. Presidents of the State Bars of Texas, Louisiana, and Mississippi gave short reports as did the Legal Aid Executive Director of Alabama. The Florida Bar President, Alan Bookman, gave a tremendous ten minute talk on catastrophes happening to law firms. It far transcended only hurricane or natural disasters. When Alan returned to his seat that was next to mine in the Florida delegation, I asked him for his notes that he gladly gave me. There was a message in all of this for us in MLA.

The Nominating Committee is the final word in ABA activities. They presented the name for a President Elect to follow Karen Mathias. As with Karen, I believe it made an excellent selection in William H. Neukom of Seattle. He has recently returned to his old law firm that is headed by Bill Gates, Sr., after spending twenty years as General Counsel for Microsoft. He is a no-nonsense person who really impressed everyone with his remarks.

A vote was taken over the strenuous objection of the TTIPS Section to raise the dues for regular members to \$399.00. This was passed, but there was substantial opposition. Failure to have passed it would have meant that over the next three years a deficit of about twenty million dollars would have been incurred.

Mr. Golemon was there in the Texas delegation. He came looking for me and I went looking for him, regrettably probably at the same time. So when he was on my side of the hall, I was on his side of the hall. Upon my return, I telephoned Mr. Golemon. We had a good conversation. This was my second attempt to reach him. The first occurred before the meeting. He is helpful for MLA having a Committee mentor.

As always, I consider it a great privilege and pleasure to be able to work with the President, Officers and Board members. It has been most enjoyable, albeit an undeserved experience for me. I continue to be on the alert for anything that would adversely impact MLA and trust that my efforts are of benefit.

Respectfully submitted,  
James F. Moseley  
MLA Delegate to  
ABA House of Delegates

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

Held in the Coral Room  
The Alexander All-Suite OceanFront Resort  
5225 Collins Avenue  
Miami Beach, Florida  
on  
March 18, 2006  
9:20 a.m.

The March 18, 2006 meeting was called to order by President Thomas S. Rue at 9:20 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:

Dennis L. Bryant	Edward F. LeBreton, III
Robert J. Gruendel	Stephen V. Rible
Christopher O. Davis	John M. Ryan
Allan R. Kelley	Harold K. Watson
Sandra L. Knapp	John M. Woods

**SECRETARY'S REPORT**

Secretary James W. Bartlett, III of Baltimore reported that the meeting materials relating to the MLA Spring Meeting in New York on May 2-5, 2006 would be e-mail-"blasted" to the membership next week and would also be mailed to all members. Secretary Bartlett also reported that the PROCEEDINGS is at the printer's and is expected to be in the hands of PC Solutions for mailing to the membership before the end of March.

Upon motion duly made and seconded, the minutes of the November 3, 2005 meeting of the Board of Directors were unanimously approved and

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accepted. The minutes of the November 3, 2005 meeting of the Board of Directors will be published in the Fall 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 October 27, 2005. He reported that the MLA is approximately \$25,000 ahead of last year and doing well, with approximately \$300,000 in the bank.

Treasurer Bonner reported that approximately \$351,000 in dues bills have been sent out. This total is down somewhat from prior years, due to removal from the rolls of members who were not paying their dues. Expenses have also been going down, due in part to publishing the Directory on a biannual, rather than annual, basis and due to savings on stationery attributable to a letterhead template prepared by Secretary Bartlett.

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, 2005 will be appended to the original of these minutes.

#### **MEMBERSHIP SECRETARY'S REPORT**

Membership Secretary Philip A. Berns of Henderson, Nevada reported that the applications of 21 lawyers have been received and were recommended by him for Associate membership. Upon motion duly made and seconded, the applications of the following 21 Associate members were approved:

Limor Ben-Maier of Covington, Louisiana  
Christine Z. Carbo of Houston, Texas  
Cody D. Constable of New York, New York  
Hamilton H. Emery, IV of Portland, Oregon  
Robert Louis Gardana of Miami, Florida  
Noah Jarrett of Portland, Oregon  
Paul B. Kerlin of Houston, Texas  
Christopher Michael Raney of Houston, Texas  
Jeanie Marie Tate of Houston, Texas  
Sook H. Lee of Downey, California  
Tara L. Leiter of Birmingham, Alabama

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Julie A. Nelson of Washington, D.C.  
Christopher Nolan of New York, New York  
S. Brian Perry of Lafayette, Louisiana  
LCDR Jose A. Quinones of Bayamon, Puerto Rico  
Kim Robins of Fort Lauderdale, Florida  
Irwin H. Schwartz of Seattle, Washington  
Nyka M. Scott of New Orleans, Louisiana  
Alberto E. Struck of New Orleans, Louisiana  
José Juan Torres Escalera of San Juan, Puerto Rico  
Douglas R. Williams of Tampa, Florida

Mr. Berns reported the receipt of one application for reinstatement of a former member, Evanthia Coffee of New York, New York. Upon motion duly made and seconded, the reinstatement of Evanthia Coffee as an Associate Member was approved.

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

MacDonald Deming of Tampa, Florida  
Milton I. Goldstein of St. Louis, Missouri  
William T. Foley, Jr. of Tinton Falls, New Jersey  
The Hon. Joel K. Tyler of White Plains  
The Hon. William Byrne, Jr. of Los Angeles, California  
Steven A. Frank of New York, New York  
William J. Burke of New York, New York  
Carter T. Gunn of Norfolk, Virginia  
Howard L. Myerson of New York, New York

After the admission of the 21 new Associate members, and the reinstatement of one Associate member, the total membership of the MLA is 3,078.

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**

### **Comité Maritime International**

President Rue reported that he, First Vice President Burrell, Second Vice President Marwedel, Director Christopher O. Davis, and other members of

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the MLA attended the CMI Colloquium on February 12–15, 2006 in Cape Town, South Africa. It was an excellent meeting, addressing such subjects as fair treatment of seafarers, places of refuge, and other timely subjects.

A CMI Assembly will be held in Dubrovnik, Croatia, in April 2007. A CMI Conference will take place in Athens in October 2008, and the next CMI Colloquium will take place in Chile in 2010.

### **UNCITRAL**

Developments relating to the UNCITRAL Working Group on Transport Law are being monitored by Chester D. Hooper. A meeting of the Working Group will be held in Vienna in November 2006.

### **ABA Resolutions on Ocean Policy**

The MLA is attempting to get Robert B. Parrish of Jacksonville, Florida appointed to the ABA Standing Committee on Environmental Law. He is officially registered as a candidate for that Committee.

### **MLA Website**

President Rue reported that Kevin G. O'Donovan of Philadelphia, Chair of the MLA Website and Technology Committee, has been requested to provide an instruction sheet for accessing and effective use of the upgraded MLA website and its interactive features. It is anticipated that this instruction sheet will be distributed to the MLA membership before the Spring Meeting.

Edward F. LeBreton, III of New Orleans pointed out that certain documents that have historically been on the MLA website are no longer on the website. After considerable discussion, it was agreed that a committee should be formed to determine what is and is not on the website and to ensure that all appropriate documents are on the website. A Board Website Committee consisting of Director Dennis L. Bryant, Second Vice President Warren J. Marwedel, and Secretary James W. Bartlett, III was appointed.

### **2006 Spring Meeting**

The next General Meeting will be held at 9:30 a.m. on May 5, in the Great Hall of the Association of the Bar of the City of New York. The Annual Spring Dinner will be held that evening at Pier 60, 23rd Street and

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the Hudson River. As reported earlier by Secretary Bartlett, materials relating to the meeting and dinner will be distributed to the membership by email and regular mail next week.

### **2006 Fall Meeting**

Details of the 2006 Fall Meeting, to be held in San Francisco on October 3–7, 2006, were reviewed by Membership Secretary Berns.

Director Sandra L. Knapp of Chester Springs, Pennsylvania pointed out that notice of the San Francisco meeting, which is being held approximately a month earlier than Fall Meetings traditionally have been held, needs to go out to the membership, so that they can take special notice of the date and arrange their schedules accordingly. During the discussions that followed, it was pointed out that while there is a MLA Calendar of Events on the MLA website, members do not always take notice of the dates of the events. It was suggested that an email message should be sent to the entire MLA membership on a quarterly basis advising them of the upcoming MLA schedule of events. Secretary Bartlett will undertake sending a quarterly e-mail message to the MLA membership advising them of the upcoming events on the MLA schedule.

### **Fall 2007 Meeting**

The Fall 2007 Meeting will be held at the Sanibel Harbour Resort & Spa, 17260 Harbour Ponte Drive, Fort Myers, Florida 33908, [www.sanibel-resort.com](http://www.sanibel-resort.com), October 21–28, 2007. Dennis Minichello of Chicago is Chair of the 2007 Fall Meeting Arrangements Committee.

### **Law Students**

President Rue will be sending a letter to admiralty law professors requesting their insights and suggestions as to how the MLA might interact with law students interested in maritime law.

### **Career/Employment Opportunities Page on Website**

Treasurer Bonner will be preparing a template for a career/employment opportunities page on the MLA website that will be offered to MLA members without charge. It is anticipated that this website feature will be used primarily by law firms, insurance companies, and other entities having employment openings.

### **MLA Publications**

Second Vice-President Marwedel is investigating the possibility of making MLA publications available to non-members on a regular basis for a subscription fee of \$135 per year for subscribers within the United States and \$155 per year for foreign subscribers.

### **Resolutions of Appreciation**

RADM John E. Crowley, currently Chief Counsel and Judge Advocate General of the United States Coast Guard, will be leaving that post on April 18, 2006 to become Commander of the Ninth Coast Guard District in Cleveland, Ohio. President Rue proposed that a certificate containing a resolution of appreciation of the MLA be presented to RADM Crowley. A motion to present RADM Crowley with a certificate containing a resolution of appreciation was made, seconded, and duly approved by the Board.

Captain William Baumgartner, currently Chief of the Office of Maritime and International Law of the United States Coast Guard, is being promoted to the rank of Rear Admiral and will be replacing RADM Crowley as Chief Counsel and Judge Advocate General of the Coast Guard. A motion was made, seconded, and duly approved that Capt. Baumgartner be presented with a resolution of appreciation with respect to his service as Chief of the Office of Maritime and International Law. Capt. Baumgartner will be replaced as Chief of the Office of Maritime and International Law by Capt. Charles D. Michel.

### **Nominating Committee**

A motion was made that the names of the members of the Nominating Committee be posted on the MLA website beginning in 2007, *i.e.*, in the weeks leading up to the 2007 Spring Meeting. After a discussion by the Board, the motion was seconded and approved unanimously.

A motion was duly made and seconded that the MLA membership be advised that nominations for Officers and the Board of Directors for the term beginning May 2006 should be submitted to Past President Hayden, Chair of the Nominating Committee, by an appropriate date in April. The motion was adopted by a unanimous vote of the Board. Secretary Bartlett will include this notice in his email that accompanies the distribution of the Spring 2006 Meeting materials.

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**Presidential Activities**

As previously reported, President Rue attended the CMI Colloquium in Cape Town, South Africa, on February 12–15, 2006. President Rue also will be taking part in the John R. Brown Moot Court Competition on April 1, 2006 in Houston and the IMO Meeting on April 24–28, 2006 in London.

**Future Officer and Board Meetings**

- A. MLA Spring Meeting, New York, New York—May 2–5, 2006
- B. Officers and Board Meetings, Mystic, Connecticut—August 4–5, 2006.

There being no further business to come before the Board of Directors, the meeting was adjourned at 10:45 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 Cromwell Room  
Association of the Bar of the City of New York  
42 West 44th Street  
New York, New York  
on  
May 4, 2006  
9:30 a.m.

The May 4, 2006 meeting was called to order by President Thomas S. Rue at 9:30 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



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The following directors also were present:

Dennis L. Bryant	John M. Ryan
Christopher O. Davis	John P. Schaffer
Allan R. Kelley	Harold K. Watson
Sandra L. Knapp	M. Hamilton Whitman, Jr.
Edward F. LeBreton, III	John M. Woods
Stephen V. Rible	

#### **SECRETARY'S REPORT**

Secretary James W. Bartlett, III of Baltimore reported that a Schedule of Upcoming MLA Events had been e-mailed to the Association membership in April and will be e-mailed to the membership on a quarterly basis.

Upon motion duly made and seconded, the minutes of the March 18, 2006 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the March 18, 2006 meeting of the Board of Directors will be published in the Spring 2006 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, 2006. He reported that the MLA is ahead of last year with approximately \$336,000 in the bank but with \$61,000 already having been paid in advance for the dinner at Pier Sixty on May 5, 2006.

Treasurer Bonner reported that approximately \$227,000 in dues have been collected, which translates to approximately 65 percent of the dues bills that were sent out.

In terms of expenses, this is a year in which the MLA Directory will be published, and that expense will be approximately \$40,000.

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, 2006 will be appended to the original of these minutes.

**MEMBERSHIP SECRETARY'S REPORT**

Membership Secretary Philip A. Berns of Henderson, Nevada reported that 18 Associate Member applications for Proctor status were received and approved by the Proctor Admissions Committee. Mr. Berns moved for the approval of the elevation of the 18 Associate Members to become Proctor Members. The motion was seconded, and the following Associate Members were approved for Proctor status by unanimous vote of the Board of Directors:

David J. Berger of Newport, Rhode Island  
Peter J. Frost of Washington, D.C.  
Patrick K. Cameron of Baltimore, Maryland  
Eric Kaufman-Cohen of San Francisco, California  
Bryant E. Gardner of Washington, D.C.  
Jeffrey J. Asperger of Chicago, Illinois  
Alexander C. Papandreou, of Houston, Texas  
Louis Simon III of Lafayette, Louisiana  
William J. Riviere of New Orleans, Louisiana  
Constantine G. Papavizas of Washington, D.C.  
Richard T. Buckingham of Washington, D.C.  
Edward Dangler of Sunnyvale, California  
Andrew D. Kehagiaras of Los Angeles, California  
Timothy R. McHugh of Wellesley, Massachusetts  
Dana Henderson of Seattle, Washington  
John F. Ryan of New York, New York  
Brian B.A. McAllister of New York, New York  
James L. D'Andrea of Jacksonville, Florida

Pursuant to Section 203 of the MLA Bylaws, an application was received nominating Gregory F. Linsin of the United States Department of Justice in the Environmental Crimes Section, Washington, D.C., for membership in the MLA and requesting a waiver of the four-year requirement for achieving Proctor status. The Proctor Admissions Committee recommended that the four-year requirement be waived. By a unanimous vote of the Board of Directors, Gregory F. Linsin was approved as a Proctor Member.

Mr. Berns recommended the admission of seven lawyers for Associate Membership. Upon motion duly made and seconded, the applications of the following seven Associate Members were approved:

Diane Bucci of Stamford, Connecticut  
Lili Fay Beneda of New York, New York

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Nika T. Hallakorpi of New York, New York  
Ikuko Sano of Honolulu, Hawaii  
Michael J. Cummins of San Francisco, California  
Marker E. Lovell, Jr. of San Francisco, California  
G. Geoffrey Robb of San Francisco, California

Mr. Berns reported that five applicants had been recommended as Non-Lawyer Members. Upon motion duly made and seconded, the following five persons were approved as Non-Lawyer Members:

Paul Barnes of New York, New York  
Nancy L. Zachariades of New York, New York  
Anna Quinn of New York, New York  
Dwight A. Menard of Jacksonville, Florida  
Steven Ficon of Jacksonville, Florida

Mr. Berns reported that four judges had been nominated for Judicial Membership. Upon motion duly made and seconded, the following four judges were approved as Judicial Members:

The Hon. Callie V.S. Granade of Mobile, Alabama  
The Hon. William H. Steele of Mobile, Alabama  
The Hon. William E. Cassady of Mobile, Alabama  
The Hon. Burt W. Milling, Jr. of Mobile, Alabama

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

William T. Foley, Jr. of Tinton Falls, New Jersey  
The Hon. Joel J. Tyler of White Plains, New York  
The Hon. Gerald L. Goettel of White Plains, New York  
The Hon. William N. Byrne, Jr. of Los Angeles, California  
Steven A. Frank of New York, New York  
William J. Burke of New York, New York  
Carter T. Gunn of Norfolk, Virginia  
Howard L. Myerson of New York, New York  
David O. Cooke of Washington, D.C.  
Professor John R. Kramer of New Orleans, Louisiana  
William A. Porteous, III of New Orleans, Louisiana  
Deborah J. Kossow of Washington, D.C.  
Richard T. O'Connell of New York, New York

After the admission of the seven Associate Members, five Non-Lawyer Members, and the four Judicial Members, the total membership of the MLA

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is 3,098. 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**

### **Ocean Policy Forum**

President Rue reported that an Ocean Policy Forum dealing with the possible ratification of the Law of the Sea Convention took place on April 12, 2006 in Washington, D.C. Barbara Burke attended the forum on behalf of the MLA.

### **Letter to Admiralty Professors**

President Rue reported that he sent a letter to all of the Academic Members of the MLA as well as to the admiralty professors on a listserv maintained by Professor J.P. Jones asking for their input as to how best to interact with law students having an interest in admiralty law.

## **UNCITRAL**

Chester D. Hooper of New York, New York is monitoring developments relating to the UNCITRAL Working Group on Transport Law. A meeting of the Working Group will be held in Vienna in November 2006.

### **ABA Resolutions on Ocean Policy**

There has been no progress toward the appointment of Robert B. Parish of Jacksonville, Florida to the ABA Standing Committee on Environmental Law, although he is officially registered as a candidate for that Committee.

### **MLA Website**

A letter has been sent to all MLA members enclosing their passwords to the members-only portal of the MLA website and other materials explaining the new features of the upgraded MLA Website. This includes a step-by-step introduction to the new website and features illustrations of the various screens that the members will see in navigating the website.

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The responsibilities of the MLA Administrator, PC Solutions, and Intercounsel, which set up the MLA website, were discussed. The Board unanimously adopted a motion that PC Solutions shall henceforth be the MLA's sole contact concerning the website and will deal on its behalf with Intercounsel.

### **Environmental Crimes Initiative**

The MLA is acting as facilitator in an effort to address concerns with regard to environmental crimes prosecutions relating to the maritime industry. Michael G. Chalos of Port Washington, New York is leading this effort, in which the MLA is seeking to have the Department of Justice, the United States Coast Guard, and industry sit down and talk about these issues. It is hoped that "best practice guidelines" for shipowners can be developed.

### **2006 Fall Meeting**

Forrest Booth of San Francisco and John Edginton of Point Richmond, California made a presentation to the Board of Directors concerning the arrangements for the 2006 Fall Meeting in San Francisco on October 3–7, 2006. The meeting will be at the Sheraton Palace Hotel. Committee and Board meetings will take place on Wednesday, October 4 and Thursday, October 5. The President's Reception will be on October 4, and there will be a dinner at the Palace Hotel on October 5. On Friday, October 6, the Pacific Admiralty Seminar will be held, and there will be a dinner that evening at the California Culinary Academy. The General Meeting will take place on the morning of Saturday, October 7, followed by a luncheon cruise during Fleet Week in San Francisco, which features performances by the Blue Angels.

### **Fall 2007 Meeting**

The Fall 2007 Meeting will be held at the Sanibel Harbour Resort & Spa, at Fort Myers, Florida, on October 21–28, 2007.

### **Transportation Law Association**

President Rue reported that there have been informal discussions with the Transportation Law Association, a bar association similar to the MLA that deals with a wide variety of transportation issues. The Transportation Law Association has a maritime committee. The MLA will continue to communicate with the Transportation Law Association to determine how we can coordinate.

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**Presidential Activities**

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

- A. John R. Brown Moot Court Competition, Houston—April 1, 2006.
- B. IMO Meeting, London—April 24–28, 2006.

**Future Officer and Board Meetings**

- A. Officers and Board Meetings, Mystic, Connecticut—August 4–5, 2006.
- B. MLA Fall Meeting, San Francisco, California—October 3–7, 2006.

There being no further business to come before the Board of Directors, the meeting was adjourned at 11:20 a.m.

Respectfully submitted,  
James W. Bartlett, III, Secretary