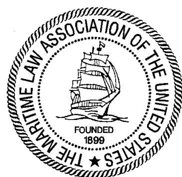


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May 4, 2007

THE MARITIME LAW ASSOCIATION

OF THE UNITED STATES

# SPRING MEETING—MAY 4, 2007

PRESENT:
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WARREN J. MARWEDEL
PATRICK J. BONNER
JAMES W. BARTLETT, III
ROBERT G. CLYNE
PHILIP A. BERNS
THOMAS A. RUE

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Robert B. Acomb, III
William Ryan Acomb
Julia M. Adams
Stephen A. Agus
Paul B. Arenas
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Francis J. Barry, Jr.
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Stephen B. Johnson
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Marshall P. Keating
Allan R. Kelley
Terence Kenneally
Donald J. Kennedy
Lawrence I. Kiern
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Bruce A. King
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Janet W. Marshall
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W. Brett Mason
Raymond L. Massey
Douglas Matthews
Charles J. McCarthy
John H. McConnell
Daniel G. McDermott
Eugene J. McDonald
Kevin L. McGee
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Michael J. McHale
Colin McRae
Carolyn Elizabeth Meers
Dwight Menard
James E. Mercante
Charles D. Michel
Brian J. Miles
Dennis Minichello
J. Ramon Rivera Morales
James F. Moseley, Sr.
James F. Moseley, Jr.
Walter Muff
Thomas J. Muzyka
David A. Nourse
George W. Nowell
Robert P. O'Brien
Kevin G. O'Donovan
Michael D. O'Keefe
Richard W. Palmer
Armand M. Paré, Jr.
Patricia L. Parker
Robert B. Parrish
Edward J. Powers
Mary Elisa Reeves
Stephen V. Rible
Barbara L. Ristow
William J. Riviere
Dean H. Robb
Edwin D. Robb, Jr.
C. Kent Roberts
Thomas A. Russell
James E. Ryan
John M. Ryan
Michael J. Ryan
John Scalia
Gordon D. Schreck
Janis G. Schulmeisters
David J. Sharpe
Louis P. Sheinbaum
David F. Sipple
David W. Skeen
Peter Skoufalos
Kevin Beauchamp Smith
Jonathan S. Spencer
Michael E. Stern
Norman M. Stockman
William Storz
Michael F. Sturley
Norman C. Sullivan, Jr.
Michael L. Swain
Joseph C. Sweeney
Joseph P. Tynan
Michael A. Underhill
Matthew J. Valcourt
Michelle Otelo-Valdez
Alan van Praag
John P. Vayda
David N. Ventker
Kenneth H. Volk
Allen K. von Spiegelfeld
Thomas J. Wagner
Daniel R. Warman
Deborah C. Waters
Harold K. Watson
James C. Winton
Frank L. Wiswall, Jr.
Daniel H. Wooster
Thomas M. Wynne
Robert J. Zapf
Pamela Zarlingo
Ahmed Zarnegar
JoAnne Zawitoski

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And the following 9 guests:

David Colford
Peter J. Cullen
Adriana Jimenez
Frances Keeler
Jonathan Lux
Rick Schimizze
Patrick Stewart
Valerie Strasoldo
Percy Levar Walton

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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING
NEW YORK, NEW YORK
MAY 4, 2007

**PROCEEDINGS**

MS. BURRELL: Good morning, everyone. Please come on in and take your seats so we can get started. We have a very full agenda. This Association has a lot to get done.

I welcome everyone and call this meeting to order.

As is customary, I'm going to have the officers report first, and then we will move on to all of our other business. So with that, I would like to call on our Secretary.

Mr. Bartlett, please, will you give your report to the Association.

MR. BARTLETT: Thank you, Madam President.

I would remind you all, if you have not done so, be you member or guest, to sign the sign-up sheets on the table outside the door. Also, speakers, when you come to the microphone, please also bring with you your card to give to the court reporter to facilitate her endeavors.

The Board has met twice since our last General Meeting. We met on March 13th in New Orleans and yesterday here at the Association of the Bar of the City of New York.

We discussed, as we always do, many subjects. But as I always do, I will put most of those aside, because they will be the subject of subsequent reports.

On other things that probably will not be reported on, the MLA is in the process of having all of its documents digitized. We are doing that in conjunction with the University of Hawaii, and when that project is completed all of the documents will be accessible through the website, and this will have a searchable format. This should facilitate research that you would want to do with respect to the MLA documents.

The *Ad Hoc* Committee on Environmental Crimes, which is endeavoring to facilitate communications between industry and the government, specifically the Coast Guard and the Department of Justice, to try to come up with best practices guidelines with regard to matters involving alleged environmental crimes, is continuing in that effort. Meetings will soon be held between industry and the government, to be followed by a public meeting in the near future.

The Board has approved a new membership category, that being Law Student members. We are in the process of amending the By-Laws to effect that change, along with other amendments to the By-Laws, and those should be presented to the Board for approval at its summer meeting.

The Board yesterday approved the creation of a new special committee to be populated exclusively by in-house counsel. So if you are an in-house counsel or if you know of members who are or who would be interested in participating, please contact President Burrell.

The Board approved the sending of a letter from President Burrell to the Commandant of the Coast Guard requesting that the Coast Guard commence or recommence rulemaking affecting recreational boats and other documented vessels.

In connection with CLE to be provided at our meetings, for the first time at the Sanibel Harbour meeting this fall, we will work in conjunction with the Tulane Admiralty Law Institute, and they will assist us in doing various things that will allow you to get CLE credit in your respective states. That should greatly enhance our CLE capability.

President Burrell next week, on May 10th, will attend the Average Adjusters meeting and dinner in London and then will go on from that to the IMO Diplomatic Conference on the Draft Wreck Removal Convention May 14th to 18th in Nairobi. She will then go back to London to take part in the CMI Working Group on Places of Refuge on May 22nd, and then in June she will attend the Canadian Maritime Law Association meeting.

As she cannot be in two places at the same time and cannot get around as easily as Matt Lauer, Past-President Rue and First Vice-President Marwedel will be the Maritime Law Association's representatives at the CMI Assembly and Symposium in Dubrovnik, May 10th to 12th.

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

MS. BURRELL: Second? All in favor? Opposed? The report is accepted.

Our Treasurer, Mr. Clyne.

MR. CLYNE: Thank you, Madam President.

I'm pleased to report that I have survived my first year as Treasurer, and the Association is not bankrupt yet.

Actually, we are doing very well. As of the end of the third quarter we had $254,000 in cash and investments.

We had a very successful meeting in San Francisco. Anytime we don't lose money on a meeting out of New York is a good thing, and that was a very exceptional meeting.

We are pleased to have been able to maintain our dues at $135 again this year.

You all should have received your dues notice. If you haven't paid yet, we ask that you please take care of that as soon as possible.

Finally, I mentioned this in San Francisco, but I've been filling some big shoes here in following Marshall Keating and Pat Bonner. I would like to publicly thank Pat for helping me with the transition in this job.

That completes my report, and I move for its adoption.

MS. BURRELL: Second? In favor? Opposed? The report is accepted, Bob.

MS. BURRELL: Our Membership Secretary, Mr. Berns.

MR. BERNS: First, it is unexplainable that in an organization of as many split personalities as we have that you can't be two places at once.

I'll make this short. We have a long agenda.

On March 13th with the approval of the Board for the admission of 21 Associates, reinstatement of two Associate members, the total number of members was 3,105. As of April 13th, a report from our administrative representative in Buffalo, the number was 3,000. The reason for that change is due to the number of resignations, deaths and, sorry to say, the dropping of 84 members due to failure to pay dues through 2005 and 2006.

The Board met on May 3rd, and we approved the elevation of 16 Associate members to Proctor status. Additionally, we reinstated one member who had been called to active duty for a year and served in Dubai, and was actually active in maritime management there, as well, and not only approved his reinstatement, but also Proctor membership. We had 17 applications approved by the Board for Associate membership. By the way, anyone interested in any of the names, see me after the meeting and I will tell you who was involved. We had a reinstatement application from one non-lawyer, and that was approved.

I again request that all applications for Proctor and for Associate membership be done by email, because this way we are able to circulate it around the country to the various members of the Committees.

We also approved three Non-Lawyer applications. Again, the names will be available afterward. There were no applications from Judicial members or for Judicial members. And we again encourage you to recommend judges for membership. We have just not been getting that many over the last few years.

We did get one Academic membership application, and that was approved. And the part that I always am reluctant to report on is the listing of the deaths of our members. And this is a compilation since the October 2006 meeting: John Hays of Comptche, California; Andrew T. Martinez of New Orleans; Lloyd C. Nelson of New York; John G. Holland of Cairo, Illinois; Thomas J. Boyle of San Rafael, California; H. Lee Lewis of Houston, Texas; Gilbert S. Fleischer of Rockville, New York, with whom I worked for 25 years; Charles B. Achuff of Bala Cynwyd, Pennsylvania; William S. Busch of New York; Clarence E. Hagglund of Minneapolis; and John O'Kane, Jr, of Honolulu.

Madam President.

MS. BURRELL: I would like to ask for a moment of silence in remembrance of our departed members. Thank you very much.

MR. BERNS: For many of you, we have a surprising number of people who do not have their email addresses listed on our website. Please check both the printed directory, which will not be out again until next year, because we went to a two-year cycle, but also check on the website and check to see if your email address or any other address is up-to-date. This is also needed not only so we can send you notices, but anything else that

is involved with the MLA. And we are doing more and more work and notices by email.

As to Standing Committee membership, you all, whoever has expressed an interest, should be listed as a member. We have a three-Standing-Committee membership limit. If you are a member of the Young Lawyers, that does not count against your three.

I know Michael Marks is sitting here. He was dubious about it. But it does not count, Michael.

MR. COHEN: How about membership on the Executive Committee, does that count as one of the three?

MR. BERNS: We take a mirror to your lips.

In any event, you are limited to three memberships. Check on it. You can be a voting member of only three. You can be a "listener," which means you can attend an unlimited number of Standing Committee meetings to participate; you just can't vote. And you will be listed on the portal as a "voter" or a "listener." You can check that out, which one it is. If you want to change Committees or get off Committees, there is also a procedure for that.

With the approval this week of the Board of the elevation of 16 members to Proctor status, reinstatement of two members, elevation of one to Proctor status, admission of 17 Associates and one Academic member, and the three Non-Lawyers, our numbers are now 3,023.

I will continually emphasize the need for an aggressive approach to getting members as Non-Lawyers, and lawyers, *et cetera*, Judicial, Academic, and ask that if you do, please contact me. It can be done by email. Judicial and Non-Lawyers should go to the President.

And that constitutes my report.

MS. BURRELL: Thank you. Do you want to move its adoption?

MR. BERNS: No.

MS. BURRELL: We will cast it out.

MR. BERNS: So moved, reluctantly.

MS. BURRELL: Thank you very much. Is there a second? All in favor? Okay, Phil, you are outvoted.

I would like to just say that probably if we did a concordance of today's meeting we would find that the word "website" is the most frequent noun that will appear in the transcript. That is because so much of the Association's business now can be conducted through the website, and, what's more, can be conducted more efficiently and more accurately, as well.

The website serves the Committee system in many ways. You can become a voting member or listening member of any Standing Committee in this Association through the website. Being a listening member does not mean participation only in some abstract fashion; it means you will get every document that that Committee publishes and news of the internal Committee workings, as well. Simply as a matter of keeping yourself informed, you might want to consider becoming a listening member of several Committees that you hadn't considered previously. I invite you to do that, but please do it through the website.

Another website resource that you should all know about is the form library, which includes an *amicus* form, and the other forms that the Association uses. As a matter of first resort, check there if you want to do something, if you want to nominate somebody, or if you want to participate in any Committee.

With that said, let me welcome our guests. We have been honored, as we often are, with the presence of people representing other associations or otherwise holding a very dignified status.

We have with us today Peter Cullen, who is the Immediate Past President of the Canadian Maritime Law Association. Will Moreira, the current CMLA President, expressed his regrets, and Peter took up the baton. We also have Captain Chuck Michel, who is head of the Coast Guard's Office of International and Maritime Law. He not only comes to our General Meetings and to the Board lunch and other events, but also is frequently a lecturer at our Committees. His contribution is truly a great one. In addition, Klaus Mordhorst, President of the SMA, is here today. At the Board lunch, we had Deirdre Littlefield, who is the head of IUMI.

At this point I would also like to do some other honoring, and that is honoring the people who will be stepping down from the Board this year. These Directors have done three years of service on the Board during a time

of great change. The Board is now a very different organ from the one it was a few years ago.

First of all, the Board is divided into Subcommittees. Each Board member is assigned to a Subcommittee that meets between the meetings of the Board as a whole and works on various issues to anticipate the needs of the Association, to examine every part of the Association's functioning, to make sure everything is working as well as it can.

The Board Subcommittees are the Subcommittee on Committees, which looks into not what they are doing but how they are doing it. For example, that Subcommittee was responsible for trying to shift the meeting times of Committees and meeting places of Committees for this session so as to make it most convenient to attend the largest possible number of Committee meetings.

There is also the Subcommittee on Finance, which looks after, plans ahead for, and examines the Association's financial condition and what we need to be doing to maintain the Association's financial health.

We have also the Subcommittee on Membership, which is responsible for the draft resolution on Law Student membership and other activities to encourage people to join the Association.

We also have the Subcommittee on the Website that is always looking for ways to make membership in the Association more valuable.

That is one changed aspect of the Board. This is real activity, real participation in the management of the Association.

Board members who may not realize what they had signed on for three years ago are to be honored indeed for having taken so lively and strong a part in making these Subcommittees work right from the getgo.

The Board has another function now, too, which is to have people to lunch. Board members will coordinate lunches or cocktail parties for the local maritime practitioners, the regional maritime practitioners. These informal, local meetings have been immensely successful and have elicited comments from people who don't participate ordinarily and have praised this "outreach" for bringing the Association to them.

With that said, I would like to thank the Board members who are stepping down: Chris Davis, Sandy Knapp, Hal Watson, and John Woods. So, I ask you all to express your gratitude to Sandy, John, Chris, and Hal.

We also have a Committee Chair who is stepping down. Katharine Newman is following the tradition of the Young Lawyers Committee of recycling every two years so as to leave room at the top and keep people coming in. Katharine also is retiring as head of the CLE Committee. With the Young Lawyers Committee, Dana Henderson, formerly the Vice-Chair, will be stepping up. Mike Ryan, who wears a lot of hats, will be coming in as Chair of the CLE Committee. Katharine deserves special thanks for chairing two Committees ably at the same time, a very tough accomplishment.

The Committees' Chairs have had new responsibilities over the past few years. In case you haven't noticed, you can find out what any Committee of this Association is going to be doing beforehand by accessing its agenda on the website. You can participate by teleconference if you can't attend in person. The Committee Chairs share these and other new duties to keep the Association informed and involved in their activities, which really are the essential activities of the Association. Our Committee chairs have all been doing a bang-up job.

I now would like to call for the Committee reports. We will do this alphabetically.

Jay Paré, ADR and Arbitration, and Jay will be followed by Don Greenman, Carriage of Goods.

MR. PARÉ: Madam President, fellow members.

The Arbitration and ADR Committee met yesterday at Holland and Knight. I think we had a record of 43 people.

The main subject of our meeting yesterday was antisuit injunctions. We were very fortunate to have a distinguished international panel, including Lindsay East of Reed Smith Richards Butler giving the English view. The English are, I think, the most prominent in issuing antisuit injunctions. We also had John O'Connor from Langlois Gaudreau O'Connor, who gave the Canadian view. The Canadians are perhaps the most active in the world in fighting antisuit injunctions, so that was an interesting contrast. And we also had our own Keith Heard of Burke & Parsons in New York, who gave the American view. In addition to that, Michael Cohen gave an overview of the current draft of the UNCITRAL draft instrument.

As it turns out, the two subjects, antisuit injunctions and the UNCITRAL draft instrument, have a lot in common now. That is because, as you may

recall, under the original draft instrument that took up the cause of the Association to have anti-*SKY REEFER* protections, cargo interests were granted the right to sue in a variety of locations, such as the ports of loading, ports of discharge, place of receipts, *et cetera*, notwithstanding the presence of a forum selection clause or an arbitration clause in the bill of lading.

The more recent drafts of the UNCITRAL instrument now:

MS. BURRELL: Jay, I'm going to interrupt you, because UNCITRAL is going to be taken up at the conclusion of the Committee reports as a general topic.

MR. PARÉ: The only thing I want to say is that there now will be as part and parcel, perhaps, of the latest UNCITRAL draft, widespread use of antisuit injunctions, and so I thought that the presentation by the speakers on antisuit injunctions was very useful for us, because it shows what we may well be doing in the future.

The Committee has also prepared a newsletter that will be available on the Association website. In addition, the Committee is continuing to look into the arbitration and jurisdiction provisions of the UNCITRAL draft instrument.

That constitutes my report.

MS. BURRELL: Thank you, Jay. Don Greenman. And Don will be followed by Tony Whitman of Vessel Regulations.

MR. GREENMAN: Thank you, Madam President.

At our meeting on Wednesday we discussed what may seem to be a very trivial matter: How do you cite the Carriage of Goods by Sea Act? As you may recall, when Title 46 was codified, because of the ongoing effort to come up with the new convention in UNCITRAL, the Carriage of Goods by Sea Act was not part of the compilation, which means that at the moment it is still back in the form of a statute. Various people had sent me inquiries as Committee Chair about how do you cite COGSA, so I thought it was a good idea to put it on the agenda.

With a little bit of plagiarizing, we came up with the following from Michael Sturley. To cite, say, the package limitation in COGSA, one could use: "Carriage of Goods by Sea Act §4(5), Ch. 229, 49 Stat. 1207 (1936), *reprinted in* note following 46 U.S.C. §30701." You could add: "previously 46 U.S.C. §1304(5)."

I have noticed in looking at cases for AMC that hardly any of the judges are aware that there are new statutes. Very rarely do you ever see anything cited to the new code. One judge tried to cite COGSA as a note to a section to the Harter Act, but then later on in his opinion he reverted to 46 U.S. Code 1300 *et seq.*, which doesn't exist anymore.

We also at our meeting had an executive summary of Professor Sturley's CLE presentation, which is going to occur this afternoon, on the clash between the Carmack amendment and COGSA. Since train wrecks do bad things to cargo, this is a hot issue for through bills of lading. Four Courts of Appeal do not apply Carmack to the inland rail carrier, and two do, including the Second and Ninth Circuits. Unfortunately, the issue was before the Supreme Court earlier this year in a case in which Professor Sturley's crowd was representing the good side, which is the cargo side, I think, and, faced with such austere opponents, the other side caved in and settled before the case was ever heard.

We had a presentation by Paul Keane on what some of the confidential terms in service contracts are. Fortunately or unfortunately, because they are confidential, all he could do is give us a generic description of them. But since most of the cargo these days is moved under a service contract, service contracts are going to become somehow important. And if you are a student of the subject, you will find that there has been almost no litigation in which a service contract was involved.

Finally, Mike Ryan, who is retiring as Chairman of our Cargo Liability Subcommittee, as Liz said, gave us a presentation on the subject of what you can do to cargo when a cargo blows up on your ship. The *DG Harmony* case is currently floating around, and I believe that will come down from the Second Circuit any day now.

We also had an update on the UNCITRAL draft document and a lively discussion on jurisdiction and arbitration, but that will be deferred until the end of the meeting today.

And so with that I conclude my report.

MS. BURRELL: Thank you, Don. Tony Whitman for Regulation of Vessel Operations. And after Tony we will have Steve Johnson for Fisheries.

MR. WHITMAN: Thank you, Madam President, members and guests.

On Wednesday afternoon the Committee on Regulation of Vessel Operations, Safety, Security and Navigation met at the offices of Holland and Knight. It was a lively and very entertaining and informative meeting. It ran somewhat beyond our 1800 termination time and kept a few members dry longer than they might have liked, but I think that it was worthwhile.

We were honored with the presence of Captain Chuck Michel, who is here again this morning. Captain Michel spoke at great length on developments with the Coast Guard, emphasizing waterside security issues, which are now what the Coast Guard is most interested in.

Having gotten vessel security plans and facility security plans rolling, now the issue is what do we do about the waterside security issues, and the Coast Guard is going to be very active in that area. Also LNG and other dangerous or high-risk cargoes and high-risk vessels, such as large passenger vessels, are of interest to the Coast Guard. The state involvement in waterside security is something which Captain Michel and the Coast Guard are most interested in, involving both the federal government, which is to say the Coast Guard, state authorities, and private industry, in joint efforts for security.

Captain Michel mentioned that there is presently in place a new security plan for the Cove Point LNG Terminal—excuse me—on the Chesapeake Bay, which incorporates this private industry, state government, federal government partnership which the Coast Guard is seeking to encourage.

Only hitting the highlights of Captain Michel's presentation, there were also points made with regard to chemical security regimes and the fact that facilities can opt to be MITSA regulated, which is to say maritime side regulated, as opposed to chemical regulated, and most operators are choosing to be MITSA regulated.

We were also graced with the presence of Katharine Newman, who gave us an excellent presentation in connection with non-maritime specific regulations of interest, such as ADA, HIPAA, Sarbanes Oxley, and so forth.

Katharine also raised an interesting new factual situation. In Tacoma, Washington, a radio antenna is apparently so powerful, this is to say a commercial radio station is so powerful, that it is causing arcing in vessel cranes and power surges on vessels that are located near this radio station, and that raises issues which Captain Michel intends to pursue.

We also were visited by the new General Counsel of the Maritime Administration, Elizabeth Megginson, who after 17 years as a Congressional staff person has now become General Counsel to MARAD. Liz Megginson spoke at length about the reorganization of MARAD, MARAD's involvement in suspension and debarment issues, concern over ballast water discharge regulations, and the like.

We had Amy Larson, who is General Counsel for the FMC, as well. The FMC has functioned or is functioning with no Chairman of the Commission, which means that for the FMC to do anything, all of the Commissioners have to agree. They have to even agree to buy a railroad ticket for Amy to come to New York. So she said there is not a lot happening at the FMC at the moment, but that the report of the Antitrust Modernization Committee indicates to her that there may be something coming down the road with regard to the Shipping Act, and she says to stay tuned on that.

We then had the usual updates by members, including Larry Kiern, on MARPOL Annex VI. Stay tuned. With MARPOL Annex VI, action is expected in Congress this year. Larry advises that if you think the record-keeping requirements for oil pollution are onerous, just wait until you see the record-keeping requirements on air pollution and the opportunities that that will provide for the government to come after our clients for issues of record-keeping, false statements, and the like. The consensus of the Committee meeting was no matter what you put down in your records, even if it's wrong, when the Coast Guard comes aboard just don't lie about it.

Larry reported also on CIFIUS and anticipated reform in CIFIUS, which is to say the Committee on Foreign Investment in the United States.

Past Chair Dennis Bryant, or Chairman Emeritus, I should say, spoke on TWIC, the continuing difficulties with TWIC. Captain Michel said that he had adopted the policy of predicting that TWIC would be up and running in six months from whenever he is asked that question. We will see whether we get there or not.

Dennis advised that Title 46 has been fully codified and there is a clean-up bill to pick up some odds and ends, including statutes that slip through during the codification inter-regnum.

Jeff Moller spoke on a very interesting issue with regard to the NTSB, which after investigating capsizing of the ETHAN ALLEN on Lake George

has gotten itself involved in recommendations for regulation of vessels which operate solely on state waters, passengers carrying vessels on state waters. The Committee is forming a task group to communicate with the NTSB and work on that issue with the NTSB. If anybody is interested in that, please contact Jeff Moller.

I will defer to Jim Moseley, Jr., in connection with the report that he received from Dave Dickman, an update on pollution cases, criminal pollution cases. Although the consensus was, again, don't let the Coast Guard talk to your crew if they come aboard.

Finally, I should say that our Committee and Jim Moseley's Marine Ecology Committee are working toward the idea of resuming an old practice of holding a spring meeting in Washington, D.C., in order for government representatives to be able to attend in greater numbers than has been the case when they have to come New York. That is something we are working on, and we will keep the Association posted.

Madam President, that concludes my report.

MS. BURRELL: Thank you very much, Tony.

I would like to add that one of the Committee's speakers, Elizabeth Megginson, who is Chief Counsel of MarAd, has also just become a member of the Association. So it can't hurt to ask if they want to join.

I will now call on Steve Johnson for Fisheries, who will be followed by Beau Gelpi for Inland, River and Ocean Towing Practices.

MR. JOHNSON: Thank you, Madam President.

The Fisheries Committee of the Association met at the office of Garvey Schubert Barer, 100 Wall Street, on Thursday, May 3rd, from 11:00 to 1:00. In fact, we dragged on until about 1:30.

Again, we had very good attendance at the meeting, partly because I hit upon the device of offering free lunch. We thought that Phil Berns would be there, but unfortunately it conflicted with another free lunch.

We arranged for participation by conference telephone, and we had several members from the Seattle area participate by phone. Guests attending

the meeting were Tom Willis and Doug Cameron of the Coast Guard National Vessel Documentation Center and Murray Bloom of the Office of Chief Counsel at the Maritime Administration.

We discussed legislative developments of interest to the fishing industry. As the first item of business, we reviewed the Magnuson-Stevens Act amendments that came with the reauthorization legislation that passed at the end of last year, and noted that there were some particularly interesting provisions dealing with limited access permits and limited access rights that may be created by regional fishery management councils.

We reviewed the new Administration bill that establishes a permitting system for acquaculture facilities sited in the exclusive economic zone. We noted that it was somewhat similar to a bill that floated around in the Congress last year and never got anywhere, and perhaps that offers a premonition as to what is going to happen to this bill.

We reviewed the status of proposals that have been made in Congress to amend the Ship Mortgage Act and the Magnuson-Stevens Act to deal with the issue of maritime liens and mortgages as they may affect limited access permits. You may recall that the Association passed a resolution two years ago proposing that the Congress legislate by amending the Magnuson-Stevens Act to make clear that limited access permits that frequently have very large value to vessel owners not be considered appurtenances to fishing vessels, and, therefore, not subject to the maritime lien regime, not subject to the preferred mortgage regime that would otherwise apply to appurtenances.

The MLA approved proposed legislation that was rather sophisticated and intellectually rigorous, and, of course, Congress has not yet gotten around to adopting our approach. On the other hand, a very simple direct and short version of legislation that would do essentially the same thing passed the House as part of the Coast Guard reauthorization bill in the last Congress, and it may well come before this Congress. We have been in touch with Congress, committee staff, and this short version of our proposal is actively under consideration. The Committee discussed this and decided that since this approach also would achieve the objectives that the Association had identified, that we would put our oar in in support of that approach.

Lisa Reeves produced a Fisheries Committee newsletter with several recent cases of interest that were discussed.

And finally we discussed recent U.S. District Court challenges to Coast Guard determinations, Coast Guard rulings on U.S. build issues and the dilemma that shipowners are placed in by having to rely on Coast Guard rulings when they are building very expensive vessels and then having those rulings challenged after the work has been done and the vessels have been delivered, and then courts will decide, apparently, whether they will be permitted to be used for their intended use.

Those cases that have been filed recently include the *Shipbuilders Council of America* case in the Eastern District of Virginia, a case that was dismissed on ripeness grounds and another case in the Eastern District of Pennsylvania involving the metal trades unions and a Philadelphia shipyard. That case is still pending.

Thank you, Madam President. That concludes my report.

MS. BURRELL: Thank you very much, Steve.

We will have Beau Gelpi for the Inland Waters and Towing Committee.

MR. GELPI: Madam President, the Inland Waters and Towing Committee met at the offices of McAllister Towing on Wednesday morning. We thank McAllister for their continued support of our Committee. We discussed the usual recent cases and developments.

Buck McAllister, who is our Secretary, gave a nice report on industry concerns, primarily the ongoing monitoring of the upcoming Subchapter (M), which puts towing vessels under the inspection of the Coast Guard and requires safety plans for them. That is something we're watching carefully. It is still in the rulemaking process.

Gene George on behalf of our Subcommittee for the Great Lakes gave an interesting report concerning the Michigan deballasting regulations, that could have impact on the Uniformity Committee, as well as the Marine Ecology, because if you can imagine just going into the Great Lakes, you pass through I think four states and Canada. So if every state has their own deballasting rules, it can present quite a problem.

We continue to meet. Our meetings are growing in number, and the input continues to be great.

And that concludes my report.

MS. BURRELL: Thank you very much, Beau.

Chris Davis for International Organizations, Conventions and Standards, or IOCS, as it has abbreviated itself, followed by Jim Moseley, Jr.

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

The International Organizations, Conventions and Standards Committee met on Thursday, May 3, 2007, at the offices of Holland & Knight. The meeting was well attended, with approximately 40 Committee members and guests in attendance.

We were fortunate to have Jonathan Lux as a guest speaker. As many of you know, Jonathan is a partner with Ince & Co, a leading London firm known for its expertise in shipping and insurance matters.

Jonathan spoke on the subject of Intertanko's legal challenge to the EU directive that seeks to criminalize accidental discharges of oil from vessels largely on the basis that this new EU directive contravenes, or is in violation of, international law, specifically MARPOL. Jonathan is extremely well qualified to address this issue since his firm is representing Intertanko in the legal proceedings that were begun in the English High Court and have now been referred to the European Court of Justice.

Thereafter we heard from Michael Sturley, Chet Hooper, and Vince DeOrchis, who provided an update on the UNCITRAL Draft Instrument on Transport Law, and in particular what transpired at the last Working Group session held in New York from April 16th through the 27th, 2007.

Captain Chuck Michel, who has been a busy man indeed, was also present and reported on recent developments at the IMO Legal Committee, including the status of the draft Wreck Removal Convention, which as Jim Bartlett mentioned, goes to a Diplomatic Conference in Nairobi, Kenya, in mid-May. Captain Michel also provided updates on the 2000 Protocol to the Athens Convention and the status of the insurance cover that Marsh is offering, which will provide coverage up to $500 million on passenger vessels.

He also addressed fair treatment of seafarers, places of refuge, and the prospects of ratification by the US of the UN Convention on the Law of the Sea or UNCLOS. There are glimmers of hope that perhaps after four Administrations and 25 years ratification may be on the horizon.

We also heard from Jerry White, who was standing in for Mike Wilson, our Classification Societies' Subcommittee Chair. Jerry addressed recent developments in the classification society area, including the status of the *PRESTIGE* litigation and the Fifth Circuit's recent decision in the *Hellenic Investment Fund v. DNV*. He also addressed or reported on the current status of discussions and negotiation that are taking place between the EU and classification society and industry representatives concerning the issue of limiting the liability of classification societies.

Frank Wiswall gave us a brief update on the initiative he is working on regarding criminal acts on the high seas, an area which remains of concern to both the IMO and flag states.

Finally, we covered some of the upcoming activities of the CMI, including the next Assembly scheduled for Dubrovnik, Croatia, which will take place next Friday morning, May 11th, in conjunction with the Joint CMI-Croatian-MLA Symposium on Maritime Law, which takes place on May 11th and 12th, 2007.

The next CMI International Conference is scheduled to take place during the second week of October in 2008, and will be held at the Astir Palace in Vouliagmeni, Greece. The program is still under consideration and has not been finalized.

Madam President, that concludes the report of the IOCS Committee.

MS. BURRELL: Thank you very much, Chris.

We will now hear from Jim Moseley, Jr., for Marine Ecology and Maritime Criminal Law, who will be followed by Bruce King for Marine Financing.

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

The Marine Ecology and Maritime Criminal Law Committee met, and the first item of discussion was shortening our name. We met Wednesday afternoon at the law offices of Thacher Proffitt. We had approximately 75 members and guests.

Among the attendees were members from the government and the shipping industry. From Crowley Maritime Corporation we had a new member, Dwight Menard. From the United States government we had Greg Linsen

from the Department of Justice in Washington, D.C. We also had Captain Chuck Michel, who we all know is quite busy at these MLA meetings. We do appreciate the participation of the government and industry members, because they give us feedback on important issues.

And to follow up on what Tony Whitman had said earlier, we are looking to have a meeting in Washington, D.C. We will keep you all posted on our website and will try to have members of the Department of Justice in Washington who are there and more accessible, as well as the Coast Guard.

Our first item of business was Dennis Minichello, our Vice-Chairman from Chicago. Dennis gave us an update on current and pending legislation in all Great Lakes states concerning ballast water and invasive species. All Great Lakes states currently are considering legislation to regulate ballast water and invasive species. Michigan has already passed such a regulation, which is now currently being challenged in Federal Court based upon preemption arguments. Dennis is following that very closely and will keep us advised.

We also heard from Frances Keeler of Keesal, Young in Long Beach, California. She gave us an update on California regulatory enforcement efforts relating to air quality emissions. California has been very aggressive in this area, and she is keeping a close eye on these developments.

All California agencies are focusing on port-related air emissions from oceangoing vessels. Several regulations currently being considered are intended to reduce emissions from ships. Since January of this year California has required oceangoing vessels to switch to low sulfur fuels within 24 nautical miles of the California coast.

Frances also gave us an update on the *Massachusetts v. EPA* Supreme Court decision that was recently held. In that case the Supreme Court held that the Clean Air Act requires the EPA to regulate greenhouse gas emissions, and if they choose not to do so they must state why they did not do so. That case has been remanded, and we are following that case closely, as well.

We also have been fortunate enough to have the criminal law update from David Dickman, and he gave us an update on recent developments.

Larry Kiern gave us his Washington update dealing with current regulations pending in Congress on MARPOL Annex VI.

We also heard from Tom Russo of Freehill Hogan & Maher in New York, and he gave us some insight into some of the recent oily water separator cases. These have been ongoing issues that we have seen for the last several years. One development is that the Department of Justice is asking for the maximum fine and penalty against companies and individuals, which is really forcing some of these cases to go to trial for the first time.

There are several other cases pending throughout the country. We are watching this. Perhaps by our meeting in Sanibel we will have something further to report in that regard.

Madam President, that concludes our report. Thank you.

MS. BURRELL: Thank you very much, Jim.

We will go forward with Bruce King for Marine Financing, followed by Jonathan Spencer.

MR. KING: Thank you, Madam President.

The Marine Financing Committee and its subcommittees met on Wednesday and Thursday morning.

We have three projects that are ongoing that may be of interest to some of you. One is a vessel leasing statute working group that is dealing with this issue. If you have a bareboat charter with a bargain purchase option or other economic provisions similar to that, a bankruptcy court can characterize the bareboat charter as a transfer of title with a retention of a security interest by the nominal lessor. In that circumstance, on the bankruptcy of the operator the lessor can be treated as an unsecured creditor for a debt.

On land-based financings, the lessor has the option of filing an informational UCC financing statement that results in protection against that eventuality. Under U.S. maritime law and the vessel documentation and mortgage statutes there is no option of that sort.

The proposed statute would allow for the notice of filing of a bareboat charter to protect the interest of the lessor and, in fact, deem that interest to be a preferred mortgage for all practical purposes. The drafting on that is well advanced. A copy of the current draft is available on the project we have set up for it in the Marine Financing Committee area of the MLA website.

A second statutory drafting project also has a draft available on the website. It is a proposal that would allow, as Canada does, a vessel under construction to be documented when construction begins and would also allow for the filing of a preferred mortgage at that point. As you can imagine, this raises a host of complicated issues. We thought we had a very productive meeting in San Francisco, flushing out those questions, and we had another very good meeting yesterday morning.

We hope to advance the ball on that with a new draft during the summer and a conference call to discuss it, with the hope that after the Fall Meeting we might actually have both of these statutes to a point where we are in a position to forward them to the Board and to the membership for consideration.

We were aided in this discussion by the active participation of Thomas Willis and Douglas Cameron from the National Vessel Documentation Center and from Murray Bloom from General Counsel's office at the Maritime Administration. Their contributions were very helpful in these complicated areas.

We also have a third project that is being started—actually, being revived—that of taking some older Justice Department forms of pleadings for preferred mortgage foreclosures and adopting them for use by a non-governmental plaintiff mortgagee.

Edward Powers of the Joint Subcommittee on Maritime Liens and Mortgages will be heading that project, and we hope that before the Florida meeting there will be draft forms available in the Committee area of the website that interested people can review.

The idea here would be to draft those forms to be suitable for a district in which the local Model Admiralty Rules would be adopted as promulgated by the MLA. So we'll be working closely with the Practice and Procedure Committee on this project.

The Tax Subcommittee of Maritime Financing has not met for about three years, so the President and I have euthanized that Subcommittee.

That said, if five members think there should be such a Subcommittee, and will come forward with a commitment to join it, provide us with a draft agenda, and nominate one of the five to lead it, we will consider reviving that Subcommittee. Its jurisdiction could include taxation of income under

state and federal law, as well as state sales tax, state use tax, and excise taxation of vessels, containers, and the like.

Madam Chairman, that concludes my report.

MS. BURRELL: Thank you very much, Bruce.

Jonathan Spencer for Marine Insurance and General Average, followed by Jack Scalia for Maritime Torts and Casualties.

MR. SPENCER: Thank you, Madam President.

Good morning guests, members of the Association.

The Committee on Marine Insurance and General Average met on Wednesday morning. We had a busy two-hour meeting at the 40 Wall Street offices of CNA Marine/MOAC, for whose continuing hospitality we are extremely grateful.

The Committee Vice Chair, Gene George, kicked off the meeting by introducing our Committee's newsletter, which is available on the tables outside. It is also available on the MLA website on the Committee's home page and in the general document library.

It has a super lead article this time around. It's Part I of a paper by London solicitor Rhys Clift dealing with fraudulent insurance claims, and we'll have Part II in our fall newsletter.

We then have a number of case summaries prepared by Gene George himself and by Cary Wiener, who is the Secretary of the Committee, and both of them make my life very easy indeed.

Then Gene spoke about the insurance fallout from Hurricane Katrina; in fact, all of the 2005 hurricanes. He's been giving us a continuing update on that.

The GA Subcommittee reported that it continues to see very little enthusiasm for the York-Antwerp Rules of 2004. There has been one adjustment sighted in New York and that, in fact, was prepared overseas.

Also on general average, Richard Cornah, who is a fellow average adjuster in England, has told me that he and Julian Cooke are preparing a new

edition of Lowndes & Rudolph on General Average, and they have invited comment from the community at large on what they might usefully address in that new volume. I have their email addresses if anybody is interested.

Hull and P&I Subcommittee Chair John Woods brought up a recent decision in *Century Select Insurance v. Royal Insurance* where the Ninth Circuit has added to the haze generated by *Kirby v. Norfolk Southern* and *Folksamerica* surrounding the issue of servability in mixed contracts.

And we learned during the meeting that there is also a case pending in the Fifth Circuit on the same points, so we are going to have to monitor that and report to you in more detail than I intend to do this morning.

John Woods also, wearing his hat as Chairman of the Association of Average Adjusters, told us that that organization has recently amended its bylaws to make membership available to insurance company claims examiners. They envisage a series of modular examinations. And there is going to be more information about that on the Association's website, the Adjusters Association, which is www.usaverageadjusters.org. And that will be posted in a few days.

John then introduced a visitor from London, Vivian Drew of Markel Insurance, who talked to us about developments there, and in particular the joint UK—the joint English and Scottish Law Commission review of marine insurance regulations, which is focusing particularly on misrepresentation and nondisclosure, intermediaries, and precontract information and warranties. And last November the Joint Commission issued a very good paper on warranties, which we put on the Committee's home page on the website.

We then turned our attention to our guest speaker, Mary Cervati of Anderson-Kelly Associates in Mount Olive, New Jersey, who spoke to the topic of "The Business of Seafarer Claims—Control Begins on Board." Anderson-Kelly provides health solutions and insurance solutions to marine operators. And Mary prior to that uniquely combined the post of manager of marine personnel and risk manager at the old Marine Transport Lines before that was absorbed into Crowley. And she walked us through the key aspects of the personal injury claims process. I think the thing that she most emphasized was training, repetitive training, so that when an accident happens those on board take the correct steps almost as a matter of second nature.

Then two of the people in the room drew our attention to a couple of forthcoming events which I think you might all be interested in. This com-

ing Thursday, May 10th, at the Marriott Marquis, AIMU has a seminar on marine insurance issues. It is an all day affair. You can learn about that at AIMU's website, which is: www.aimu.org.

And then in October, on the 3rd of October, again the Average Adjusters are putting together a seminar on a variety of topics. Speakers announced to date may include Larry Brennan, Hal Watson, and Fred Goldsmith. And they are addressing a range of subjects as wide as wreck removal, retention between primary and excess in hull and P&I insurers, and indemnity agreements and insurance clauses in maritime contracts. Again, that is at Saint John's University in downtown Manhattan on the morning of Wednesday, October the 3rd.

Shortly after that we'll be seeing you all in Fort Myers. I look forward to it.

That concludes my report. Thank you, Madam President.

MS. BURRELL: Thank you very much, Jonathan.

I just want to note that we have to leave room at the end of the Committee reports for some of the other agenda items.

It is very hard to estimate the time that it will actually take to say what one intends to say, but I ask the Chairs to make their comments very much to the point from herein so we have some time for discussion later on. We will have to rely on written reports to supplement the written reports.

I now call on Jack Scalia for Marine Torts and Casualties.

MR. SCALIA: Thank you very much, Madam President and members of the Association. That concludes my report.

The Committee on Maritime Torts and Casualties met at the offices of Thacher Proffitt Thursday afternoon. We had 69 members and guests in attendance.

I want to thank John Woods and Jim Ford for their hospitality in making their large conference room available, which we filled to overflowing again.

It was our first meeting at that facility, and it was very conducive to our meeting. It changed our format a little, because we are used to standing

around tables throwing things at each other, and now we have to hit each other in the back of the head in order to do it. But it worked very well.

We reported on the Committee's work on the CMI questionnaire. President Burrell sent us a questionnaire on limitation from the CMI and asked us to respond to it. And this was worked on by the Committee members Paul Edelman and John Kimball, who is not a Committee member, Paul Hofmann, Kim Jefferies, and Lisa Reeves. I thank them for helping us make that report. That was submitted to the Directors and approved and sent on to the CMI. It is available on our Committee website if you would like to read it.

We had correspondence from Michaela Noble, who is the Chair of the Admiralty and Maritime Law Committee of the Tort, Trial and Insurance Practice Section of the ABA. That needs to be shortened up. She invited attendance, our members to come to the ABA annual meeting in San Francisco in 2007, where they are going to be speaking about "Intermodal Transportation, How Seamless, How Soon?"

Lisa Reeves reported that those of you who attended our meeting in San Francisco and are admitted in Pennsylvania may be able to get CLE credit, and you should contact Lisa for that.

We then went on to speakers. Paul Hofmann of New York, from the plaintiff side, led a lively discussion on the limitation cases, in particular the Staten Island Ferry case that came down in the great City of New York. And I think we had three plaintiffs' attorneys in the room and, of course, their voices were overwhelmed by the rest of us. It was a good discussion.

Then we had another presentation by Charles De Leo of Miami, who updated on us punitive damages, including the *Philip Morris* case. And that paper will be available on Monday on the Committee's website, there will be some changes, and those will be done before publication.

James Kleiner gave us a brief review of the request for an *amicus* brief by the MLA on a case known as *Gas Natural v. U.S.*

We also had a handout, which you will see on our committee website on current cases that was edited by Paul Edelman and Lisa Reeves. So thanks to both of them.

And we hope to see you all at Sanibel, where our topic of discussion will be Medicare set asides.

That concludes my report.

MS. BURRELL: Thank you very much, Jack.

I will say that the CMI was very grateful for our timely response. We are one of a very few associations that responded in the time allotted. Well done. Thank you very much.

Grady Hurley will now report for Offshore Industries, followed by Andy Goldstein for Practice and Procedure.

MR. HURLEY: Good morning, Madam President, members of the Association.

The Offshore Industries Committee met on Thursday, May 3rd, following the Marine Torts Committee at the offices of Thacher Proffitt & Wood.

We had three substantive discussions.

The discussions first began with our Vice-Chairman, Brad Jackson, introducing Professor David Robinson. Professor Robinson spoke on the Outer Continental Shelf Lands Act provisions, on jurisdiction, choice of law, and remedies.

Secondly, Mr. Chuck Lane of Halliburton spoke on the status of offshore drilling facilities following the *Stewart v. Dutra Construction* case and how that has liberally interpreted vessel status and how that may affect offshore platforms and facilities.

The third substantive discussion was handled by Mr. Brett Lebreton, who addressed marine insurance issues following a decision out of the Ninth Circuit.

Following the substantive discussion portion of our meeting we did have a procedure and practice portion. We will recommend to Ms. Burrell formation of four subcommittees of the Offshore Industry Committee. If you are interested in those subcommittees, I'll bring them to your attention at this time. The first subcommittee being proposed is the Offshore Insurance and Risk Management Subcommittee, which will focus on managing insurance and risk, including indemnification and master service agreements, additional insured status, and issues involving state and federal jurisdiction between oil companies, contractors, and vessel owners and brokers. The

second proposed subcommittee is Offshore Vessels. This subcommittee will focus on tort and contractual issues for offshore supply boats, crew boats, lift boats, tugs, and charter parties.

The third proposed subcommittee is Offshore Homeland Security and Regulations, which will focus on rules and regulations promulgated by the Department of Homeland Security, the U.S. Coast Guard and Mineral Management Services, Customs and individual states regarding security, safety, and environmental issues affecting offshore industries. The fourth proposed subcommittee is Offshore Facilities and OCS Operations. This subcommittee will focus on issues regarding oil production platforms, LNG facilities, windmill farms, pipelines, and offshore oil ports.

As far as new business is concerned, our Secretary Ryan Acomb will coordinate the work of our subcommittees and also coordinate the publishing of a biannual newsletter.

Mr. Brad Jackson also indicated that for the Houston Marine Insurance Seminar he is preparing a paper on the windmill farms that are of particular significance on the East Coast at this time. If anyone has any interest in that, please contact Brad.

We look forward to seeing everyone at Sanibel, and we are working with Jack and his Committee, Marine Torts, on having a joint Committee meeting.

That concludes my report. I thank you, Madam President.

MS. BURRELL: Thanks very much, Grady.

Andy Goldstein for Practice and Procedure, to be followed by Frank DeGiulio for Recreational Boating.

MR. GOLDSTEIN: Madam President, officers, guests and members of the Association.

The Practice and Procedure Committee met on Wednesday, May 2nd, at the palatial, I mean really palatial, premises of Carter Ledyard.

I would like to thank both Gary Sesser and Donald Kennedy for their reception, their food, and their drinks. The quality of the food was matched by none.

We discussed some routine matters initially. If there are any members of the Committee here that were not there on Wednesday, would you please make sure they get to Phil Berns or to me their proper email address. This seems to be a continuing problem with the Association.

Ed Powers of Norfolk attended the meeting of the Joint Subcommittee on Maritime Liens and Mortgages, which was chaired by Bruce King. I'm not going to reiterate those issues which Bruce has done so beautifully.

Alan Van Praag, as always, updated the Committee on various conventions which are taking place.

The Committee's Secretary, Larry Kahn of New York, had led a detailed discussion on the Rule B and the New York cases for EFT. These cases seem to primarily arise out of New York and not other districts. He will monitor this for us and will report at a later time. Mr. Kahn was also one of the drafters of the *amicus* brief submitted by the Association, and we thank him for that.

Professor David Sharpe, Chairman of the Working Group, led a discussion as to the Model Local Admiralty Rules. Michael Marks Cohen, Jim Bartlett, Phil Berns, had submitted comments to David, and unfortunately because of the close proximity of the meeting to the comments, David was unable to include them in his working draft. He will have those included, and we will discuss those again in Sanibel. It is hoped by the Fall Meeting that we will have a draft which can be reviewed by the Committee as a whole.

As we ran out of time, I did not have an opportunity to thank David Sharpe for the excellent work that he has done. I would like to do so today for the record. Professor Sharpe and the working group have worked many hours and will have an excellent product for dissemination.

I look forward to meeting you all in the fall. Thank you.

MS. BURRELL: Thank you very much, Andy, and thank you very much, David.

Frank DeGiulio for Recreational Boating, who will be followed by Rich Buckingham for Salvage.

MR. DeGIULIO: Good morning, Madam President.

And mindful of your admonition, I will give an abbreviated report today and promise to put the full report up on the website.

I did want to mention and recognize Robert deMatta and Carol Roberts of AON who came to the Recreational Boating Committee yesterday and gave us a very timely presentation on the state of the marine insurance market for recreational vessels. The Committee has noted that there has been a marked increase in the number of reported coverage cases involving recreational craft in the last two years. We are taking a look at the reasons for that. It could be as simple as more cases are being litigated, or it could be that underwriters are denying more often. And we thank Robert deMatta and Carol Roberts for their very fine presentation.

One more point I would like to mention: The Coast Guard is holding a Small Vessel Security Summit on June 19th and 20th in Washington. It is an invitation-only affair. I discovered that apparently the Association had not been invited to attend that summit. I think that I have finagled an invitation. I imposed on our friend Captain Michel this morning to see what he could do in that regard.

I think it is important for the Association to have attendance there. There are certainly going to be legal issues involved in the security concerns with recreational boating.

That concludes my report, Madam President.

MS. BURRELL: Thank you very much, Frank.

I think that what Frank has just described is one of the wonderful benefits that the Association has had by reason of the generous spirit of the government personnel who participate and make themselves accessible. This is another valuable link between the Association and the Coast Guard.

We will now have Jason Harris, filling in for Rich Buckingham for the Salvage Committee, who will be followed by Doug Matthews for Stevedoring.

MR. HARRIS: Thank you, Madam President. It is an honor to be here this morning.

The Salvage Committee met Wednesday, May 2nd, at 9:30 a.m. at Holland and Knight's office here in New York. There were 26 attendees, 24 in person, and two by phone.

Our special guest speaker was Andrew Chamberlain, a solicitor and partner with Holman, Fenwick & William of London. He spoke essentially on three topics. First, of interest to most was the environmental salvage award initiative which is currently being pushed by the International Salvage Union. Secondly, he spoke on the trends in the Lloyd's Open Form with SCOPIC. That is special compensation protection and indemnity clause. And third, he spoke on the business trends in admiralty practices in the UK, particularly the consolidation of the firms.

Next we heard from Michael Mitchell of the American Club, who also spoke on environmental salvage, which was the popular topic.

Next, Richard Fredricks of the American Salvage Association spoke particularly regarding the hope that the Coast Guard salvage and firefighter regulations will be issued sometime in the winter of 2008.

Some guy named Jason Harris presented the Spring 2007 edition of the "Recent Developments in Salvage Law," a copy of which you may find outside. If all of the copies are gone, you can find a copy on the website as well.

Peter Hess spoke regarding historical salvage, treasure salvage, and marine archeology issues, particularly from the private sector perspective.

Our Chairman, Rich Buckingham, who regrets that he couldn't be here with us this morning, reported on place of refuge policy developments, both international and domestic. Particularly, the Coast Guard is working with the United States National Response Team towards making guidelines for use by United States captains of the port.

Finally, the National Maritime Salvage Conference will be held October 9 through 11, 2007. And unfortunately there is no word yet on whether the Maritime Law Association's Young Lawyer Division will sponsor the entertainment program at that event with a cabaret dancer from the troupe that we watched last night. I will let Ms. Betsy Meers talk about that. But my poor eyes are still burning.

That will conclude my report. Thank you.

MS. BURRELL: Thank you very much, Jason. I hope the eyes calm down a bit.

We will have Doug Matthews for Stevedores, Marine Terminals, and Shoreside Services, followed by Betsy Meers, who will be speaking for Young Lawyers.

MR. MATTHEWS: Madam President and fellow members of the Association, the Stevedores, Marine Terminals, and Vessel Services Committee met from 9:30 to 10:45 yesterday morning at the offices of Jones Hirsch Connors & Bull at One Battery Park Plaza.

As usual, we began with a review of recent cases that affect the interests of members of our Committee. Tom Langan presented a survey of these cases, one of which of interest was the *Healy-Tibbetts* case out of the Ninth Circuit, which is read to greatly expand the definition of "harborworker" under the Longshore and Harborworkers Compensation Act. I'll post a cite to this case in our written Committee report.

We then had a report from Tony Filiato on the proposed amendments to the Longshore and Harborworkers Compensation Act. There are approximately 60 separate amendments that were filed last year but never made it out of committee. These amendments were recently refilled as Senate Bill 846, on March 12th. Due to the recent reconstitution of Congress, it is not expected that a lot of these changes will be enacted, but there is some optimism that some will be enacted.

Our Committee then addressed issues affecting the industry in which our Committee operates. Naturally, the focus was on TWICs. I won't go into a lot of detail, but while it was suggested that the TWICs cards would possibly be fully implemented by the end of this year, it was thought that this was a bit optimistic. Furthermore, there really isn't any idea when the card readers, which were due to be in place in October or September of '08, will be installed and functional.

We had a report from David Loh, the Chairman of our Subcommittee on Freight Forwarders and Custom House Brokers, to the effect that there were no new cases to report.

That concludes my report, Madam President.

MS. BURRELL: Thank you very much, Doug.

Betsy Meers, who will be followed by Jim Moseley, Sr.

MS. MEERS: Good morning. I apologize on behalf of the Young Lawyers for any burning eyes. I think we had a great social event last night. It was a lot of fun and very entertaining, but no burning eyes necessary.

In addition to the social event, we also had our Committee meeting yesterday at Freehill Hogan & Mahar. It went very well. It was well attended. We thank Larry Kahn for hosting us once again.

We had a speaker. Doug Mueller spoke about contract drafting, particularly focusing on maritime issues.

We also have an ongoing project with the Practice and Procedure Committee. We thank all of our members for participating in those projects.

And, as always, we invite all of the Committees to solicit our help with any projects that anybody has. That is what we are here for. People want to get involved and help. If you have anything for us to work on, please let us know.

And lastly, on behalf of Dana Henderson and Alex Giles, I would like to thank Katharine Newman for her six years in the Young Lawyers Committee. She has really worked hard and has been a great role model for us in the Committee. So, thank you.

And that concludes my report.

MS. BURRELL: Thank you very much, Betsy.

Indeed, this Association depends on the Young Lawyers not as just a pool of energy, but as a pool of talent that has assisted the Association not only in the fulfillment of the ongoing projects but also in all of the intricacies of the functioning of the Association. They have been helpful on archives projects. They have been helpful in administrative projects. They really do make things run.

I will just echo Betsy's statement that if any Chairs don't have liaisons, if they need somebody for a project, they should establish a liaison to the Young Lawyers Committee.

Jim Moseley will now report as our liaison to the ABA and will be followed by Mike Ryan on the CLE.

MR. MOSELEY, SR.: Good morning, President Burrell. Probably there should be some limit to one Moseley speaking at one meeting. But nevertheless, I'm here to speak about the ABA activities.

As all of you know, the ABA has affiliate organizations, which we are. We have been for many years an affiliate organization. As such, we have a seat in the House of Delegates, which is often filled by those who should rightfully be out to pasture but are still trying to participate in the activities of the Association.

We are starting a couple of new matters that I want to alert you to. And up until just very recently there was very little advance notice given as to what was coming before the House of Delegates, which is a policy-setting arm of the ABA. In fact, there are about 350,000 members of the ABA, of the over a million lawyers in America. And that organization, therefore, is about a third of the practicing lawyers, the in-house lawyers, and law professors. And it also has 50,000 non-dues-paying student members.

But the ABA does speak for us. We're all lawyers according to their constitution. But that does not mean that we must agree or necessarily disagree with whatever their position is.

In that regard, I just want to alert you to several important matters.

Number one, one of the significant things that is coming up before many of our clients will be the gun legislation. There has been a move afoot, and one state has adopted it, that employees may bring weapons, firearms on to the work site. The national chamber—and the ABA—in a sudden burst of wisdom thought that guns on the jobsite was a bad idea. A resolution was passed, with the MLA voting for it, that guns in the workplace should be forbidden. So, you may probably be getting questions from some of your clients as to this legislation as it moves its way through various states and also perhaps Congress.

Secondly, there is something that needs to be coordinated with the MLA Practice and Procedure Committee. It was submitted to the House of Delegates last meeting, but was so obscure and misunderstood that it was withdrawn for further tinkering. It is a tutorial concept to be presented by the ABA in concert with the Judicial Conference. That is going to come up next meeting.

Thirdly, the Model Judicial Code was amended with a great deal of discussion. But that is going to be coming up before your States. It was voted on almost unanimously after the amendments, and the Association voted "yes"—in favor of a new Model Judicial Code.

We have had another significant development, which you will want to know about. An MLA member since 1977 is now the Executive Director of ABA, and that is usually a pretty long-term job. Hank White, who is a Proctor member of MLA, is now the Executive Director. And he is moving things with what I perceive and I think everybody else perceives to be in the right direction. His idea was providing resolutions early—for better study by this policy setting organization. He is giving us heads up. For example, I just last week got a very cursory view of 20 items that are going to be coming up at the summer meeting.

One issue among these is sort of deja vu all over again, as Yogi says. The title of this resolution, which is not in print yet, is "For the Purpose of Enhancing Biological Diversity, Ecosystem, and Values." Well, a lot of pirates are always sailing under false colors. And I think that may be one of the things that Steve Johnson and David Farrell have worked on in the Fisheries Committee. So as soon as I receive a copy of it, which hopefully will be in the next 30 days, with your permission I would like to circulate it; also, with copies to the various Committee Chairs, so we can see if we should be adverse to anything that is in there, as we have been in the past.

There has been no movement to have any new ecology legislation taken to Congress yet. We must make our voice heard.

The other matter that you may want to pay attention to as it comes out—and I cannot give you the substance of this because it is not out yet—there is a resolution for registration of in-house counsel. If you are an in-house counsel, you may want to know that you have to be registered.

One of the very positive things that has been worked on in the past is what happens in a calamity like the hurricane in Texas and New Orleans.

So the ABA is trying to make arrangements for persons to take a *pro bono* case in a state where most of the justice system has been wiped out. Rules that would transcend state rules so that if you are in New York and feel the need and have the ability to go to New Orleans to help on *pro bono* cases, as many people have done in the past, it will be a little bit easier for to you do it.

So those are the highlights that are coming up, and the Association needs to keep abreast of the various things that may impact us. Thank you, Madam President.

MS. BURRELL: I thank you, Jim.

We will now hear from Mike Ryan.

MR. RYAN: Madam President, distinguished guests, fellow members, this might be appropriate, I'm not sure, but the first shall be last and the last shall be first.

C-L-E, CLE, not all states require it. I think most of the people in this room are from states that do require it. Starting off, it is an individual responsibility. The attorney must conform to what his state requires.

Now, what has the MLA done? What can it do for you? The MLA is a provider, an accredited provider in New York State. New York State only.

Jim Bartlett mentioned the meeting down in Florida where we have joined as co-sponsors with Tulane University. Because Tulane has been in the business and knows how to do it, they will go out and get accreditation from other states, but not all. It is just physically impossible—manpower, finance, *et cetera*. I don't think Bob Clyne is going to give us the money to get accredited in Utah or something like that. At any rate, I wanted to caution you on that.

The important thing is where you are from. Check before you come or check to make sure that you will be taken care of, because it would be a rather nasty surprise to be down in Florida and to say, well, here I am, and they say, thank you very much, but we don't have any forms from your state.

What will be covered will be the majority of the states that cover the major portion of the membership: California, the West Coast, Louisiana, Texas, New York, the East Coast. But if you are from Utah, I don't think you are going to find much help down there.

If you need CLE, what the individual should do is check with his particular state to find out, can I get credit for this out-of-state affair, how do I go about it, *et cetera*. Right now on the Committee website there is a chart showing the requirements for providers. Now, that doesn't give much help,

really, to the individual members. We are looking into replacing that with a chart that will give you more information on what you would need as the providee.

Chairmen, for your meetings, I would urge you to check with Betsy Meers. We are still an accredited provider in New York. Check with Betsy. She will tell you how to do it, what you have to do, for your meetings. It may seem onerous at first, but it really isn't. All you have to do is meet the requirements. They are requirements. It's not our requirements; it's the states' requirements, and we have to conform to that. Important is preplanning, communication. Committee meetings ought to be able to furnish an hour's credit every time you have a meeting if you are geared to it.

And, not surprisingly, I checked on the attendance at our two prior away games, 2003, 2005. There was no one from Utah there.

MS. BURRELL: Thank you, Mike. We like the geography.

We will now hear from Dan McDermott, who is the Vice Chair of the Uniformity Committee. He will be followed by Kevin O'Donovan, Website and Technology.

MR. McDERMOTT: Thank you, Madam President and distinguished members.

The Uniformity Committee met Wednesday in our office. It was well attended, and we had a lively discussion.

Once again we were able to offer CLE credit. The Committee prepared a paper which we left outside this morning, and it will also be on the website.

The primary focus of the meeting revolved around the increase in usage of Rule B attachments, specifically in New York. There has just been an explosion of litigation that has evolved in New York, primarily because of the banking system in New York and, with funds being transferred in U.S. dollars, they usually pass through a New York bank. The discussions centered around seven cases that were in the January edition of AMC on this issue.

I completed my report on Monday and then read the New York Law Journal; there was another case reported. We were able to include that one in. Yesterday it happened again. The New York Law Journal cited another

case that Judge Sweet decided yesterday. So by the time you read the Committee's report, even by the time I finish this presentation, it might be outdated already.

I want to acknowledge Jim Mercante and Paul Edelman who submitted an article in the admiralty column of the Law Journal last week dealing with the *Aqua Stoli* case that came down in 2006.

The two major cases in the Second Circuit dealing with Rule B attachment of electronic fund transfers (EFT) are *Winter Storm*, 2002, and *Aqua Stoli*. These cases are not crystal clear in their attachment prerequisites and the determination of the validity of the attachment, and at the post-seizure hearings pursuant to Rule E(4) seems to be determined on a case-by-case basis.

What the consensus seems to be with the court hearings is that EFT funds are attachable provided that the other criteria of Rule B are met. A defendant is entitled to a prompt post-seizure hearing. The court may look beyond the allegations in the complaint in making its determination.

In two cases that were cited they named the wrong defendants. A very similar name, but it was either an assumed name or the plaintiff was trying to pierce a corporate veil.

And the courts have been liberal in amending the complaints, which is the usual case. However, at the time of the attachment if the party whose funds were attached was not the named defendant, the attachment is usually vacated. So the courts at the post-seizure hearings for the most part have allowed amendment of the complaint. However, you may have to obtain a new attachment in order to seize funds.

One of the cases discussed was whether or not a letter of credit can be attached. The court handled that differently, saying a letter of credit is not an EFT. As I said, there is a paper outlining these cases that we prepared and put on the table outside and it will also be on the website.

Three other interesting cases were discussed that Kim Kearney analyzed. And again they will be on the website, so you don't need to look for them at this time.

The Uniformity Committee will continue to monitor the developing law on attachments, as will the Practice and Procedure Committee, I'm sure.

Our next project will be to revive a project that Pat Cooney organized when he was Chair of this Committee: A report on conflicts among the circuits. That project took place about five years ago. We are going to try to revive that and update the report with new cases.

And that concludes my report. Thank you.

MS. BURRELL: Thank you very much, Dan.

Kevin O'Donovan for Website and Technology, to be followed by Cheri Chestnut.

MR. O'DONOVAN: Madam President.

As Chair of the Website and Technology Committee, I was tempted not to say anything today but just to direct you all to the website for a summary of what was discussed at our meeting.

At the meeting we discussed ways that we can improve the website to facilitate communication amongst the membership. Some of the things we talked about: Apparently some people have forgotten their passwords. We will look into a "forgot your password" button on the website. Once that button is clicked, Robin Becker will then be able to send you your password, and you can be welcomed to the website.

There have been some problems with formatting of emails, and adding attachments to emails, identifying the sender of the email, and changing the information in the "RE". We will investigate how we can improve these features, so that when you get an email you know who it is from and the attachments can be viewed.

One of the other things, if any of you have any suggestions, please feel free to contact me with those suggestions, and we'll see what we can do about improving things.

The other aspect of our Committee is really to talk about technology and things electronic. We have discussed e-discovery and, in particular, have focused on how e-discovery and the recent Federal rules may impact on the maritime cases. Going forward, as the rules become more developed, perhaps we can serve as a sounding board for the Association as to how the e-discovery rules will apply to maritime cases.

That concludes my report.

MS. BURRELL: Thank you, Kevin.

Cheri Chestnut will now tell us about tonight's dinner. She will be followed by Dennis Bryant on the *Ad Hoc* Committee on the Codification of Title 46.

MS. CHESTNUT: Good morning, everyone.

As most of you know, the MLA Spring Dinner will be held tonight at Pier 60, Chelsea Piers. It begins 15 minutes earlier this year, the reception and the dinner, so the reception will begin at 6:30 and the dinner will begin at 7:45.

We are expecting about 930 people in attendance this year, and there will be shuttle buses provided, just as last year, beginning at 9:30. And if you would like to arrange other transportation, there will be a transportation desk there. The main course will be served by 9:00 this year.

We hope to see you all there tonight. Thank you.

MS. BURRELL: Thank you very much, Cheri.

Dennis Bryant, who will be followed by Dennis Minichello.

MR. BRYANT: Thank you, Madam President.

As you all know, the Title 46 codification bill was enacted last year. The cites are starting to appear in the court decisions, but very slowly.

There is a clean-up bill that has been drafted that has not been introduced yet. It covers three somewhat disparate issues. One is, as mentioned early, the inter-regnum legislation that was enacted by Congress between the time the codification bill was drafted and passed out of the committee and the time it was actually enacted by Congress. Secondly, while the seamen personal injury portion of the Jones Act was correctly translated from the old language to the new language, it failed to fully account for an early Supreme Court decision interpreting the Jones Act, and that has been tweaked in the clean-up bill.

And, finally, wrecking in Florida. There is an 1845 statute trying to police the problem of wreckers in Florida, and it hasn't been used, cited,

whatever, since about 1850. The MLA recommended that that be left out of the codification and repealed because it was obsolete. Our recommendations were not adopted, and so it ended up in the codified bill, where it took on a new life, and the salvage community in Florida is up in arms. So hopefully we can get that addressed.

The problem is that Congress does not pay much attention to maritime issues first; and, secondly, to codification clean-up bills, so getting it introduced in Congress is a problem. We are hopeful that it will at least make it into the Coast Guard Authorization Act in this Congress, and it will be adopted without dissent by the end of this session of Congress or this Congress.

Thank you.

MS. BURRELL: Thank you very much, Dennis.

We have Dennis Minichello for the Planning and Arrangements Committee for the Fall 2007 Meeting.

MR. MINICHELLO: Madam President, members and guests.

The 2007 Arrangements Committee has been meeting regularly to put together and organize a very successful, what we hope will be a successful Fall meeting. We met most recently this morning, as a matter of fact.

The Fall Meeting is going to be between October 24th and 27th at the Sanibel Harbour Resort and Spa in Fort Myers, Florida. There are good air connections from all major cities in the United States, direct air connections into the Southwest Florida Regional Airport. This year at the hotel we have a very favorable room rate. And we will be the largest group at the hotel during that period of time.

There will be several differences from past meetings. You have already heard about the CLE accreditation in working with Tulane. We are also going to have a CLE program on Thursday afternoon and Friday morning. This is to hopefully encourage young lawyers to be able to attend on a limited basis. And we are going to be offering a reduced registration fee for young lawyers who want to attend the CLE component of the resort meeting. Also, we are going to be working with the Transportation Lawyers Association for a portion of the CLE program. They are going to be pretty much staffing a panel on intermodalism during the program.

We will have the usual evening events, which I'm sure you will find both enjoyable and entertaining. We will have the usual outdoor activities.

Watch the MLA website for updates, and look in your mail sometime this summer for the written registration brochures.

Madam President, that concludes my report.

MS. BURRELL: Thank you very much, Dennis.

We do have one more report of a very important committee, the Nominating Committee, but I'm going to hold that in abeyance and ask for a special report from our UNCITRAL delegate, Chet Hooper.

This report is a special report, but it is also a subject for discussion. Since we are at a point in the UNCITRAL Convention process, it makes sense for everybody to have an opportunity to express their views on that right now.

MR. HOOPER: Thank you, Madam President.

Professor Black of Gilmore & Black told me on several occasions not to pick up flypaper that I couldn't put down. Vince DeOrchis, Michael Sturley, and I are still holding flypaper, but we might be able to put it down in October 2008 or maybe earlier.

The schedule so far is we met, as Liz has mentioned, I guess late in April. We will meet again for the remainder of the third reading in October in Vienna, at the same time the MLA will meet in Florida. We hope to finish the third reading. It looks like we will. We have made a lot of progress in this reading. If we don't finish the third reading, there might be another meeting in January 2008.

There will be a meeting scheduled in April of 2008 at UN Headquarters here in New York where we will look at the report and finish the report. From there it will go to the UNCITRAL Commission in the summer of 2008. If it approves it, it will go to the General Assembly in the fall of 2008, which hopefully will sit as a diplomatic convention for the short period required to approve it, and then we will see if we can get our country to ratify it.

There are two major issues that were favorably decided at this last meeting. One was volume contracts, which is really service contracts. The

industry wants to be able to derogate from the instrument in volume contracts. We call them volume contracts in the instrument, because the rest of the world knows volume contracts; thus, they are service contracts, which means the instrument will apply as a default rule, but the parties to a service contract may have complete freedom of contract.

The other one was delay. A lot of the world wanted the instrument to cover delay. We didn't want to cover delay. We resolved that.

This time there was a tremendous cooperation amongst all the nations. Most of the nations spoke and said this is what I would really like, but this is my fallback position. Let's see what we can agree on in the fallback position.

It was agreed that the instrument will not mention delay liability for shippers. That will be basically left to national law. The instrument will mention carrier delay. But a carrier will only be liable for a delay in cargo past the date on which it agreed to deliver the cargo. So if the carrier has not agreed to deliver by a certain date, the carrier will not be liable. That took a long time.

Now, the contentious thing I think here is jurisdiction and arbitration. I'll try to go through this as succinctly as possible, as quickly as possible. Jurisdiction and arbitration probably would not be in the instrument at all were it not for the United States delegation. We had to make this early on a priority. We told the rest of the UNCITRAL in very polite terms, and quite often in the hall over lunch or supper, that we probably could not ratify this treaty if it did not control jurisdiction and arbitration. Basically they said why should the rest of the world help you overrule *SKY REEFER*? That should be your problem. But we were able to get it in.

So basically the current status—and we will look at this once again in Vienna—and we looked at this a few times already—for liner bills of lading, cargo will have, no matter what the bill of lading says, cargo will have the option to commence suit in the place of origin, the first port of loading, the final port of discharge, the place of destination, or the principal place of the carrier's business. If the bill of lading mentions something else, cargo has the opportunity to sue there, as well. But basically those five places.

There is an exception for service contracts. With service or volume contracts the parties to those contracts may choose wherever they would like to arbitrate or litigate. They may impose their choice on third-party holders of bills of lading. We fought this several years ago and lost the decision.

They may impose this choice on third-party holders of service contract bills of lading if the choice is one of those five places; place of loading, place of origin, and so on. They also have to state specifically and clearly in the service contract that it includes such a choice and give some kind of notice to the consignee, which will probably be notice on the face of the bill of lading, which we all realize isn't really notice.

Now we get into arbitration. As a preface I should explain that the members of the EU do not have authority to negotiate jurisdiction issues. They do not have authority to sign a treaty which includes jurisdiction issues. Only the EC acting for the EU may do that. So that when we negotiate jurisdiction, quite often the UK is not there at all. The EC is.

When we switch to arbitration, the EC goes home to Brussels and the UK comes. And we had dinner with the EC early on to try to work out a joint United States-EC position. But this is where we are.

So what I've just told you about was negotiated with the EC. Of course, we talked on the side with members of the EU, and they are talking with the EC.

Now, there will probably be an opt in or opt out provision. You realized a year ago that the language was pretty poor. The language is better now.

But when this treaty is ratified, the members will have to decide whether jurisdiction and possibly arbitration will be an "opt in". In other words, each nation when it signs may say I'm signing the treaty without jurisdiction or I'm going to sign the treaty and include jurisdiction. If we have an opt in procedure, all the members of the EU may sign right away because they don't have to opt in. They can wait for the EC to do that. If we have an opt out procedure, no member of the EU may sign the treaty until the EC decides whether to opt in or opt out.

Now, when we get to arbitrations it's different. The members of the EU have competence. So that's interesting. First of all, the theory was for arbitration clauses, parties should have complete freedom to arbitrate. We said, no, we can't have that because you are going to get *SKY REEFER* back through arbitration, and we are going to lose what we got in jurisdiction through arbitration. Then they said, well, nonliner trade should have complete freedom to arbitrate, liner trade may not. Now, at the present time the instrument is worded almost to give the nonliner trade complete freedom to arbitrate. Now, we want to change that.

I understand in this room some people may want to change that to say let's mirror the jurisdiction provision, no matter what the bill of lading says, no matter what the charter party says, or no matter what the bill of lading says. Holders of bills of lading in the nonliner trade should have complete freedom to choose one of the five places.

Now, there is one little warning there. If you choose one of the five places and demand and get the instrument so it chooses arbitration, there is some feeling that the arbitration chosen—that you will be able to choose the place of arbitration, but you'll have to use the method of arbitration defined in the bill of lading.

So if the bill of lading were to say London arbitration and the cargo interest says, no, I want to arbitrate in New York, those people would say, okay, you can arbitrate in New York, but you've got to bring over the barristers and solicitors and arbitrators to do it, and you might have to appeal that in London.

I don't think that will prevail. I think what we can get—and I know there is going to be disagreement on this—but I think what we can get the instrument to say if there is an arbitration clause in a charter party in the nonliner trade, the arbitration clause will be binding on a third-party holder of a charter party bill of lading if the bill of lading specifically incorporates the terms and conditions of the charter party, including the arbitration clauses. Basically that is the law in the Second Circuit now. Now, I think we can get that.

We can try for what I described earlier, if this is the sentiment of the MLA. We can try and say we want the claimant to have this choice, and it is the same choice in the nonliner trade that the claimant has in the liner trade.

I warn you, if we have to negotiate, and I'm telling you that my prediction is I think we can get what I just described. This is sort of the idea where the perfect is the enemy of the good.

Thank you.

MS. BURRELL: Thank you, Chet. Comments, thoughts, discussion?

MR. LILLIS: I have a question for Chet. Do you see it as basically the fault line being liner terms on the one side and volume contracts on the other side?

MR. HOOPER: Not really. It is a little more complicated. Sorry to take the time to answer, but I'll take a little time. It won't be too long.

That goes to the scope of the instrument. These two issues are tied very closely together. In the scope, some people want the trade approach. The instrument should only cover the liner trade and not the nonliner trade. Other people wanted the documentary approach, which is COGSA. The instrument would cover bills of lading or similar documents of title that evidenced the contract of carriage.

Some people would change that to say, okay, it will cover any contract of carriage, which is evidenced by a document or electronic record that performs two functions; acts as a receipt, and evidence of the contract. The third argument was the contract approach, which is the Hamburg Rules approach, which covers all contract for carriage of goods by sea except the ones we specifically carve out.

There is a combination of those approaches now, so that the instrument will cover the liner trade, it will cover contracts of carriage as I described in the nonliner trade, and it defines the contracts it will cover or not cover. So it will not cover charter parties, just as COGSA does not cover charter parties. That's where we are.

MS. BURRELL: Thank you. Michael.

MR. COHEN: Well, Madam President, I'm a little surprised to be standing up here, because I wasn't aware until this very moment that this subject was going to be open to general discussion at the General Meeting.

Although I've been speaking about the subject for the last two days, and I don't have any files and I don't have any notes.

I don't even know if Jay Paré, Chair of the Arbitration and ADR Committee, is still here. The Committee has been discussing this for two years, and with the exception of in-house counsel for a shipowner, the Committee has been unanimous and, in fact, sponsored a resolution at the Association's meeting in San Francisco concerning this very subject. So you will excuse me if I speak rather extemporaneously. I'm really not prepared.

But what I would like to start with is an approximately three-minute history of this issue. The Association's COGSA project goes back about 15 years. And in getting the Association's approval of that project one of the major

goals was to overturn the Supreme Court's decision in *SKY REEFER*. Since then it has been the consistent policy of the Association that we want to overturn *SKY REEFER*.

In 2001, the World Shipping Council and NTLeague agreed to support the Association's project if a special provision was made for volume service contracts. Essentially the deal was to treat volume service contracts like charter parties, which could specify where to arbitrate or litigate and force customers of the volume service contracts to arbitrate or to litigate cargo damage claims there.

That was announced at the Coronado Meeting. Many of you may remember. It was surprising. AIMU signed off on it. MLA really had no choice except to go along. But we secured from WSC and from NTLeague a commitment that they would support the MLA proposal, which included, of course, overturning *SKY REEFER* in all of the other instances of ocean carriage.

That commitment held through Congressional hearings. AIMU testified, NTLeague testified. The WSC testified. All agreed that it is a basic principle—stretching back for over 25 years or even longer if you start with the Warsaw Convention, that the cargo claimant has the right to choose to litigate cargo damage claims in the port of discharge.

Bob Force and Martin Davies pointed out at the San Francisco meeting of the Association that under *SKY REEFER* a lot of those cargo cases were being sent abroad. The data they accumulated made clear that cargo claimants are receiving less money in settlements as a result of *SKY REEFER* than they would have received if the cargo damage cases had been litigated in the ports of discharge in the United States. Now, that's the battleground.

In August of 2005, Chet Hooper reported to the Board that the policy of the Association to reverse *SKY REEFER* was the policy which MLA representatives on the American delegation were pressing in the State Department. Within 60 days, if I read Michael Sturley's article about what happened in the fall of 2005 correctly, there was a decision taken in the U.S. delegation that at the Vienna meeting of UNCITRAL give up getting anti-*SKY REEFER* legislation in charter party bills of lading.

Nobody in the Association, of course, outside our delegates there, knew about this. Certainly the Arbitration and ADR Committee didn't know about it.

The Vienna meeting was held in early December and that's what was decided: third-party cargo damage claimants who are holders of charter party bills of lading are bound by the arbitration clauses in the charter parties. Since the shipowners are the ones who are responsible for issuing bills of lading under charter parties, they can unilaterally decide to have arbitration in Seoul, Beijing, Tokyo, New Delhi, or wherever, and force it down the throats of the receivers in American discharge ports.

There was no report to the Board about what happened in the December meeting until much, much later. In January 2006 it suddenly came to light under circumstances not necessary to describe.

This was taken up in May of last year by the Maritime Arbitration and ADR Committee, which was informed by Mary Helen Carlson of the State Department and by Chet Hooper, Vince DeOrchis, and Michael Sturley that essentially it was a done deal and nothing could be changed. Not only that, but the MLA didn't have a voice to complain, because we are not a shipper, an owner, or an insurance carrier. So the State Department wasn't going to listen to us if we objected.

I pointed out to the State Department that there has been no maritime legislation considered by the Congress in a hundred years, with the exception of OPA90, that was enacted into law over the opposition of this Association. And in order to head off a fight I said, you know, really, we should talk about this. Otherwise we're going to have a resolution from the Association expressing dismay about the course of the negotiations of the draft instrument.

Such a resolution was prepared. Such a resolution would have been submitted to you in San Francisco, were it not for the fact that, like Saul on the road to Damascus, the State Department suddenly had an epiphany and realized, well, you know, maybe we should listen to the Maritime Law Association, after all.

At a meeting of the delegation in Washington we were given assurances that the delegation would go to Vienna in the fall of last year and would try. They heard our concerns and they would try very, very hard to address them, that we wanted *SKY REEFER* overturned.

On the basis of State Department assurances, the resolution that would have been presented to you in San Francisco was withdrawn. And the State Department lived up to its assurances. They went to Vienna and they did

not do a bad job. In the latest draft it looks like *SKY REEFER* has been overturned in all of those cases where bills of lading, including charter party bills of lading, contain choice-of- court clauses. Notwithstanding, the receivers in American discharge ports would have the option of litigating cargo damage claims in the American discharge ports.

That sounds terrific, except you must remember that the volume service contracts are excluded from that. And according to Chet, volume service contracts now constitute 70 percent of the liner trade. So we're only talking about a very small percentage of the liner trade. But the State Department did succeed in overcoming choice-of-court clauses in what Chet Hooper calls the nonliner trade, *i.e.*, charter party bills of lading. That looks like progress. And it certainly is.

On the arbitration side, more progress. The State Department was able to get the UNCITRAL folks to agree that in the liner trades, where the bills of lading are issued by the registered owners of the vessel, if there's an arbitration clause, the receiver still will have an option to arbitrate in the discharge port on his cargo damage claim.

We have very vibrant maritime arbitration organizations all over the United States—in San Francisco, Houston, Miami and New York—and I don't think this would be a terrible burden, to have lawyers in Savannah doing maritime arbitrations, perhaps with some help from the Societies of Maritime Arbitrators in those port cities or perhaps by providing arbitrators or whatever.

So, what are we left with? Well, we're left with arbitration clauses charter party bills of lading. Charters, of course, are completely excluded from the draft instrument. But the draft instrument requires arbitration clauses to be enforced under charter party bills of lading. Chet refers to this as the nonliner trade. But actually that's not so. Most containerships, if not all of them, operate under charters. Very few registered owners of the vessels, in fact, themselves operate in the containership trades. Many, many of them, if not most of them, operate under bareboat charters, under time charters, or under some other instrument. Bills of lading that are issued by containerships in those trades are charter party bills of lading, but they're really in the liner trade.

The nonliner trade that Chet refers to is bulk shipping. Of course, there are a lot of bulk trades, including the chemical trades, where really very small quantities of cargo are shipped, 30, 40 of them at a time or a chemical

tanker—and they are all shipped under charter parties. Virtually all of them involve bills of lading which are negotiated to third parties.

Among other things, what is involved here is an outsourcing of our jobs. As you know, there are three major pillars of maritime practice: collision, personal injury, and cargo damage, and all of us do cargo damage claims. We either defend or we prosecute them.

What the existing clause in the draft instrument would allow is for the owner to get together with someone to charter his ship, say a containership, say a bank, or whatever, and then to insert in the charter party an arbitration clause, wherever the owner would like, and then to issue bills of lading under that charter party which contains the same arbitration clause. It doesn't matter whether the arbitration must be at a place described in the bill of lading, or whether the bill of lading incorporates by reference the situs for arbitration in the charter party. Either way, it forces American receivers in American discharge ports to arbitrate their cargo damage claims abroad.

The basic rule in the draft instrument is that cargo claimants have the right to proceed in the discharge ports. The exception to the rule is because of the exception for arbitration under charter party bills of lading—which obligates cargo damage claimants under charter party bills of lading to arbitrate wherever the owners have selected in the charter party bills of lading. That unilaterally gives to shipowners the right to outsource a large number of the big cargo damage claims that we would have in this country, which is the biggest import market in the world.

The other thing I just want to mention briefly is anti-suit injunctions. Both the jurisdiction and the arbitration articles of the UNCITRAL draft instrument provide that if a forum is identified in the bill of lading, a state party to the convention could declare that it would enforce those clauses notwithstanding whether the receiver has a right under the draft instrument to assert a cargo damage claim in the discharge port.

So if an English court were named as the forum or if an English arbitration tribunal was named as a forum for a cargo damage claim, the English courts would have jurisdiction to enforce that clause, notwithstanding that the cargo damage claimant may have already sued in the American discharge port on its cargo damage claim. And because there is nothing in the draft instrument prohibiting it, the English court could issue an anti-suit injunction prohibiting the American cargo claimant from continuing with his suit in the American discharge port.

Now, the MLA took the position that we ought to have something in the draft instrument that prohibits anti-suit injunctions. Unfortunately, I don't think there's the political will in UNCITRAL to prohibit anti-suit injunctions in the draft instrument. We are going to have to live with that, as the Canadians are trying to live with it today. So too the Australians, all of whom have anti-*SKY REEFER* laws and have been the target of English anti-suit injunctions.

We'll have to find another way to cope with anti-suit injunctions. But we are not bereft of imagination. The Australians and Canadians have shown us the way. You simply have anti-anti-suit injunctions. Now, it sounds crazy, but it works. And essentially what it means is that if the draft instrument goes through and is modified as we think it should be modified, so as to eliminate the exception for arbitration under charter party bills of lading, routinely we would all include in our complaints applications for anti-anti-suit injunctions.

And if the owners had the temerity then to go forward in London with a parallel proceeding in violation of an anti-anti-suit injunction, they would be subject to contempt penalties in the American court. And if the contempt penalties were made maritime liens on their vessels, it would be a powerful disincentive for them to seek to deprive American receivers of their right to litigate in the discharge ports.

There are MLA people who are involved in the negotiation over the draft instrument who disagree with what I have been saying because of "reality." I'm afraid if anyone is being unreal in this situation about outsourcing our jobs, it is those who would say to you nothing can be done. Something can be done. There is no reason why there shouldn't be a parallel between the jurisdictional articles and the arbitration articles.

We have what we want in the jurisdictional articles, that trump choice of court clauses in all bills of lading, including charter party bills of lading. The arbitration articles trump arbitration clauses in liner bills of lading. There is no reason why we couldn't get the same thing for the rest of the arbitration articles. Except that is a bare knuckle fight. It's a street brawl going on in UNCITRAL in which the other side says, we want it. And so we have got to go back and say, that's too bad. We're willing to compromise and give you the same thing that you got in the jurisdictional clauses, which is a pain in the neck. But you cannot outsource our jobs.

Thank you. I took much too long, Liz. I apologize.

MS. BURRELL: The only comment I want to make, Michael, is I regret you didn't get word of this discussion, evidently as a result of miscommunication. I did endeavor to notify both the Chairs of the Arbitration and ADR Committee and you, in particular.

MR. HOOPER: Let me correct a couple of things. I don't agree factually with a lot of what Michael Marks said.

One thing particularly needs to be corrected. When I say charter party bills of lading in the nonliner trade, I mean two things. You have to have a nonliner trade, and you have to have a charter party to get that freedom to arbitrate. So that if there is a spot charter in the liner trade in a container operator, it may not impose its arbitration clause on parties, holders of bills of lading in the liner trade.

Now, the other thing I wanted to say is we have been negotiating this for a long time. I am just explaining what I think we can get, what we can't get. We can't force sovereigns to give up their anti-suit injunctions.

The instrument would permit us to go forward with a lawsuit in this country in the jurisdiction provision despite a choice of forum clause in a bill of lading and would, of course, allow us to ask for an anti-suit injunction or an anti-anti-suit injunction in this court. It doesn't specify that.

The other thing is that we are close to finishing this. We have gotten a lot that we wanted in this treaty because we have convinced the other people in UNCITRAL that the United States will probably ratify it. If we are to start to talk, as Michael Marks has, with touting our ability to kill a bill in our Congress and to prevent our country from ratifying it, you can kiss a lot that we got in this treaty goodbye.

We all know it's extremely easy in this nation to kill a bill. It doesn't take—I mean, a trained bear can kill a bill in Congress. It is very difficult to get something through. We need a two-thirds vote in the Senate for ratification. That is why our delegation is so big. We're trying to get all the representatives of industry on our delegation so that we don't have someone coming out of the woodwork at the end of day saying, my God, what did you guys do? I don't like this. I'm going to lobby against it.

Our State Department is trying to obtain the best possible instrument that would be accepted by the United States. I think what I described now is what is the best that we can probably get. And if we don't want it at all,

we can live with Sky-Reefer as we have it, and we can live with COGSA as we have it, and we can live with our $500 limitation as we have it. But if we want something, we're going to have to compromise. We're not the whole world. We're just one of the nations.

MR. DeORCHIS: Good afternoon.

I got hired by Chet Hooper fifteen years ago to assist on the new COGSA proposal, and I understood at that time through a series of meetings that we held that one of the major scopes of our new COGSA proposal was to provide anti-*SKY REEFER* legislation, and without trying to be blunt about it, the reason for the anti-*SKY REEFER* provisions was going to be to try to preserve work for us here in the United States. And we worked on that, and we tried.

Now, with all deference to Michael Marks Cohen, while the United States Maritime Law Association may have been behind every piece of legislation in the past hundred years, certainly we can tell you one piece of legislation created by the U.S. maritime legislation that got nowhere: that was our COGSA proposal. It was quickly defeated by the World Shipping Council and perhaps by NTLeague, as well. It didn't take very much.

We then turned to the CMI, and we went off to UNCITRAL, where we have been working for the past, I think it must be now 10 years on this.

I am well aware that the "best of all worlds" would be to get freedom of contract in every area of cargo litigation that we have. I'm also aware, having watched UNCITRAL, that you have to work by consensus and by compromise, something which I think all of us lawyers are trained to do.

What Mr. Cohen is doing is setting an exam passing rate of 100 here. It isn't going to work. What we do have is a grade of about 95, and that should be sufficient. What we should be studying is how much work have we preserved as a result of what has been achieved through UNCITRAL in the draft that is now out there, and how much work have we will lose because we have failed in this one area.

I think what has been missed are the comments by Mary Helen Carlson for two years to this Association and at seminars at Fordham University: Most of the countries attending UNCITRAL do not want a jurisdiction provision, at all, in the UNCITRAL convention. The jurisdiction provision is there for one reason. It is there because it is aiding in keeping the American

delegation present. NTLeague and the World Shipping Council made it clear that if it wasn't there, they were walking.

To understand the present issue, you've got to develop some boxes in your head. We have on one level two boxes: One box includes bills of lading in normal everyday liner operation. The next box involves bills of lading under service contracts.

For the everyday bills of lading, which I think most of you out there are doing some work in, you are protected. We have succeeded. You will be able to sue in the port of discharge or the place of destination. You and your client have been protected. It is the work that you are now losing because of *SKY REEFER*.

Then you have the box for service contracts. If you listen to Michael Marks Cohen, it sounds like service contracts are out the window; we're never going to see that work.

That's not true at all. I've spoken with Jeff Lawrence, who is the counsel to the World Shipping Council. They have done a major study on this. They found that over 90 percent of all shipping service contracts call for jurisdiction in the United States, well over 90 percent, quote, unquote. Of the over 90 percent of those service contracts, his estimate is that nearly 90 percent call for jurisdiction clauses that are in New York, New Jersey, and California. Mostly New York and New Jersey. Again, claims that are going to be preserved here in the United States.

For those who are working on the service contracts, you are well aware what is going to happen: the UNCITRAL instrument is going to be the default. It is the default. That is what the World Shipping Council and NTLeague have agreed to.

It is significant, because that means that if nothing else is said in the service contract, this instrument is going to control. You can derogate up, you can derogate down. That is absolutely true. But as a default, this will be here. And many of the service contracts today default to the carrier's bill of lading. There are no negotiated provisions in it.

So the two big boxes are protected by what we have done. And now we get down to the question of nonliner services. I join Chet. I don't think the charter parties that are being issued by shipowners to liner services are going to incorporate arbitration clauses. That just isn't going to happen.

On the nonliner services, you have two more boxes. One is for bills of lading which do have jurisdiction clauses in them. We have protected you on that, as well.

Now, the only thing that remains is a small box for nonliner bills of lading that have arbitration clauses that are incorporated from underlying charter parties and are being negotiated to third parties. That is the exact *SKY REEFER* situation. But how many shipments does that involve? How many claims does that involve? That's a question I've been asking Mr. Paré and Mr. Cohen for over a year. How much business is lost overseas from that?

And most importantly, that business has to be netted out, because many of us here in this room are handling claims involving arbitration clauses in charter parties which are incorporated into bills of lading under our New York Produce charter party, when it has a New York arbitration clause.

Now, if Mr. Cohen really wanted to see this all the way through, what is going to happen is that the New York arbitration clauses will no longer be enforceable. Wherever the claimant is, he can go file his arbitration or his lawsuit at whatever the discharge port. The SMA will be one of the big losers as a result of this. That is my opinion.

The World Shipping Council thinks that this whole discussion is ridiculous, and they don't want to get involved with it. Quite frankly, I didn't want to get involved in it this year either, and I said nothing at the COCOG meeting. Yet I personally continue to be accused of not having been open, honest, and forthright about what has been happening.

So, Madam President, you may have my resignation after 15 years of serving the MLA in this matter of the COGSA revision. If the MLA does not think that I've tried to do a good job, if it does not think we have been open, if it does not think we've tried our best to bring you up-to-date on what is happening here, then, quite frankly, I have failed. I don't believe I should be on this committee in that light.

Thank you.

MS. BURRELL: I will call upon Brad, but let me tell you, Vince, I'm not accepting your resignation.

Let me take a moment to explain the background in this discussion. Our delegates to the U.S. governmental delegation on the draft UNCITRAL

convention were given the instruction at the commencement, "Do the best you can." Accordingly, this discussion is taking place as guidance only. A vote or instruction is not the objective. The instruction has already been given and the ideal is already there. This is a forum for discussion of the current situation and our members' reactions to it.

Brad.

MR. JACKSON: Members, Brad Jackson from Houston.

I just feel compelled to make a comment, because I would not want to go back to Houston and tell Ed Vickery, my mentor, that the huge argument at the MLA meeting was whether or not we had our jobs preserved. I was taught and members of my firm have been taught that we have to look out for the best interests of our clients.

Now, perhaps that is what is being said here. But I think the record ought to be clear that our concern is not for our own personal welfare as lawyers or arbitrators, but our concern ought to be for our clients. Let's think of this in terms of what our clients want in terms of this legislation, perhaps treaty.

The second thing I would like to know, not being intimately involved, is what is it the Association is being asked to do? Are we being asked to approve a resolution saying this is great, or what is it? What is it we're to do here today other than just talk about it, as we are?

Thank you.

MS. BURRELL: Michael? There must be other people out here with opinions. I would like to hear them.

MR. COHEN: Just two quick points.

A year ago the MLA members of the U.S. delegation were telling us that they were not our delegates. They were now members of the U.S. delegation, and they couldn't act, even within the deliberations of the delegation, to advance the interests of the Association. I don't know whether that is still their position. But they were telling us then that the MLA should send down separate delegates to present the Association's viewpoint, which is one of the reasons I was showing up at some of these meetings at the State Department.

In answer to the question about what do you say to Ed Vickery and also what are we expected to do. You're not expected to do anything, because the instructions to our delegates were to do the best you can. The policy of the Association is anti-*SKY REEFER*. Go and try to get *SKY REEFER* overturned. Try, really try. If you can't do it, you can't do it. Then you come back and we'll see where we go from there.

As to what to say to Ed Vickery. We are looking out for the interests of our clients, because according to the Force-Davies study, the clients are getting short-changed when they have their cargo claims being sent abroad. Ninety-eight percent of cargo claims are settled, and they are getting much lower settlements as a result of the *SKY REEFER* clauses. And that's an economic fact.

One final point, and that is Chet says we have achieved so much, and I want to say, yes, that is a valid point except tell us what you want to trade off for this? We know what you say we should give up. We should give up our goal getting rid of *SKY REEFER* for charter party bills of lading. What is it you say that we gain so that we, an Association, can evaluate whether what you are saying we gained is worth what we're giving up?

MS. BURRELL: I will have Chet return to that question, but in the interest of having some other participants, I will call on Phil.

MR. BERNS: I want to raise one point.

Aside from the fact that I'm getting nervous, because we're starting to lose some of the attendees here, and they should be present for this, but we're not arguing—I don't believe we are arguing that we have differences of opinion on what everyone would like to see in the report, in the treaty. What we're really talking about here is our confidence in our delegates.

I think we've all negotiated settlements. You deal and you look and you see how far you can go. And the question is are our delegates doing a competent job? They seem to me to be.

So I don't think it's a matter, Michael Marks, of getting down to distinctions, of saying I don't want this or I don't want that. It's a question of—you are raising a point: "have they gotten enough?" And that's what we're looking at, a vote of confidence.

MS. BURRELL: I call on Past President Ray Hayden.

MR. HAYDEN: I personally think that we should thank our delegates for the great work they have done for the 15 years they have been working on this.

MS. BURRELL: Tom and then Jack Lillis.

MR. WAGNER: I'm one of those individuals—Tom Wagner from New Orleans—whose practice has been on the other two pillars, personal injury and collision. I want to comment just to second what Phil has just said as well as Fred's comment.

I'm informed by this exchange, much more so than I derived from the years of listening to Manfred Leckszas discussing the Hamburg versus Hague-Visby Rules. And I applaud that. I have learned a lot.

But I'm concerned that this exchange has now become personal. We are Proctors. We come from the best bar in the country. Both views are expressed effectively and clearly. But there is now an edge to it that is inappropriate for this Association.

And I also want to add, let's put aside whose jobs or whose arbitrations are at stake. Let's get to the crux of what is best for our clients and let's think about it that way.

I applaud what our delegates have done, and I applaud what Michael has shown us about the problems that remain. But let's pledge ourselves to be the Association that Mr. Vickery and John Sims were proud to lead and promote. Let us build upon the considerable improvement in our Association and the great effectiveness achieved over the last few presidencies.

But in this room I hear some things that remind me of things that I don't like about the practice of law today; and I just ask that we focus on what the Association is about and the respect we have and enjoy for each other.

MR. LILLIS: Thank you, Madam President.

As most of you know, my name is Jack Lillis and I'm a practitioner here in New York. I just have a couple of comments.

Number one, I've had the pleasure of practicing with both Chet and Vince for over 30 years, and they have been our delegates for the last 15.

I was a delegate actually under Chet's administration and Jim Moseley's administration for the Hazardous Goods Convention and actually participated at the IMO back in 1996, and so I learned then how difficult the international environment is—with different countries coming with different points of view.

And, indeed, what Liz said a minute ago, you do the best you can, just like we do the best we can each day with the cases that come to us based upon the facts.

I was very pleased when Chet agreed to take on this and then Vince agreed to take on this. And I have marveled over the last 15 years as to how much personal time, professional time, and firm time that both of these gentlemen have put in on behalf of the Association.

So I just wanted to say from my small corner of the Bar, thank you to both Chet and Vince.

MS. BURRELL: Further comments? Chet, do you still have some things to add?

MR. HOOPER: Yes. Just very short.

I just would like to put this in a little perspective for one issue that is remaining. Michael asked me to explain what we gave up, or what we got in exchange and we didn't.

What we are left with, what I think I mentioned, is if a charter party includes an arbitration clause and the bill of lading incorporates by reference that charter party, that charter party arbitration clause will be binding on the holder of the bill of lading.

I'm not talking about an arbitration clause in the back of a bill of lading, which was the *SKY REEFER* case. And I think there is a big distinction. But I think we also have to recognize that that has been the law in at least this circuit, in the Eleventh Circuit, and other circuits of our nation, long before *SKY REEFER*.

The issue is generally litigated, that if—the only question litigated was how clearly was the charter party incorporated by reference in the bill of lading. Now, what I think we can obtain from the instrument is that plus the fact that this must be in the nonliner trade. It limits the freedom we had before.

And one other—I didn't want to mention it, but I got a letter, we got a letter to Mary Helen Carlson in I think in 2005, before we went over for the fall in Vienna, and it complained about the scope. Michael Marks Cohen got a copy of this, and I didn't get a response from him on it. But it urged us not to include charter party bills of lading in the scope of the instrument, so that holders of charter party bills of lading would be deprived of their ability to arbitrate where expert arbitrators exist, such as in New York and London. That's what the letter says.

That's what I think we can accomplish. Now, I don't want to go on and on about this. But I think we can ask for a complete mirror image of jurisdiction.

What I think we can accomplish is to narrow this freedom to arbitrate to bills of lading that incorporate charter parties by reference. And that I believe is what we had—I know I won a motion on this in 1972, and the Second Circuit has recently issued an opinion on this. Not *SKY REEFER*. This is before *SKY REEFER*. So I think that's all we are going to give up if we can work this compromise.

Thank you.

MS. BURRELL: Other comments? All right. As I said, the objective was discussion, not voting.

This is the last meeting that we will have before the next meeting of the UNCITRAL drafting group that will be taking up these issues. It therefore seemed an appropriate time to give our delegates the benefit of any views that might be of assistance to them in their future work on these subjects.

I thank everybody for participating. If anyone wishes to engage in further discussion, I'm sure that all who have spoken today would be pleased to continue the dialogue.

I will now call for our final committee report from Tom Rue.

MR. RUE: Thank you, Madam President.

It's my pleasure to report for the Nominating Committee. I'm pleased to nominate the following individuals for Officers for 2007–2008:

For Membership Secretary, Mr. Philip A. Berns of Henderson, Nevada. For Treasurer, Mr. Robert G. Clyne of New York. For Secretary, Mr. James W.

Bartlett, III, of Baltimore. For Second Vice President, Mr. Patrick J. Bonner of New York. For First Vice-President, Mr. Warren J. Marwedel of Chicago. And for President Ms. Lizabeth L. Burrell of New York.

For the four Board positions we nominate Forrest Booth of San Francisco; Donald J. Kennedy of New York; Janet W. Marshall of New Orleans; and C. Kent Roberts of Portland.

That completes my report, Madam President.

MS. BURRELL: Do we have any motions?

A VOICE: Move the adoption.

A CHORUS OF VOICES: Second.

MS. BURRELL: All right. Is the motion to cast a unanimous vote of the Association in favor of the slate proposed by the Nominating Committee?

A VOICE: Yes.

MS. BURRELL: A second?

A VOICE: Aye.

MS. BURRELL: In that case, all in favor? Any opposed? It is unanimous. Thank you very much for your vote of confidence.

We have only one more motion. I think that Dick Palmer is our senior President present here.

MR. PALMER: Madam President, thank you.

I move that this very interesting meeting be adjourned.

MS. BURRELL: Unanimous. I declare this meeting adjourned.

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

The Committee held an informative meeting on May 2, 2007 at 40 Wall Street, New York, New York.

Chairman Jonathan S. Spencer welcomed all guests and members and reported briefly on the successful meeting held in San Francisco in fall 2006. The Chairman reminded the members that the article, "Fraudulent Insurance Claims—Part I," by Rhys Clift, and summaries of recent insurance cases are to be found in the Committee's Newsletter, posted at the Marine Insurance and General Average Committee home page on the MLA website.

Dennis Minichello, Chairman of the Arrangements Committee for the Fall 2007 Meeting, made a brief announcement about the Fall Meeting.

Gene George, Vice Chairman of the Committee and Editor of the Committee's Newsletter, spoke briefly about the article on "Fraudulent Insurance Claims" as well as the case summaries. In particular, he brought to the Committee's attention the case of *N.H. Ins. Co. v. Dagnone*, 475 F.3d 35 (1st Cir. 2007). The case involved a yacht that the court found was not laid up as required by the policy, because it was still in the water and operable.

Gene George then reported on recent cases arising out of Hurricane Katrina, and summarized prior cases including *Paul Leonard v. Nationwide Mutual Insurance Company*, 438 F. Supp. 2d 684 (S.D. Miss. 2006), which denied coverage under a homeowner's policy for damage due to flooding. The case is currently being appealed. As to recent cases, he reported that in *Broussard v. State Farm*, Federal Judge Senter in Mississippi, sitting with a jury, directed a verdict awarding the homeowner the policy limits of $223,272. The jury then awarded $2.5 million in punitive damages, which Judge Senter later reduced to $1 million. State Farm and the Mississippi Attorney General, Jim Hood, entered into a settlement of the class action against State Farm. The Attorney General notified State Farm that he would terminate the state's criminal investigation and civil lawsuit against State Farm. State Farm agreed to pay between $50 million and $80 million to the class members. The court subsequently rejected the settlement for lack of evidence that it was fair and reasonable.

On the legislative front, on January 25, 2007, Florida Governor Crist signed legislation reducing property insurance rates for residents of Florida. The state also created Citizens Property Insurance Corporation, a Florida state-owned property insurance company for residential and commercial property policies including special windstorm coverage. In addition, U.S. Senator Trent Lott, R-Miss. and several House Members introduced a bill to repeal the insurance industry's federal antitrust exemption.

Mr. George reminded the Committee that every bank that is regulated by the Federal Deposit Insurance Corporation is mandated to require that mortgagors obtain flood insurance if the property is in designated flood areas. He also noted that on February 21, 2007, United States District Judge Stanwood Duval held that the Army Corps of Engineers may be sued for negligence with regard to the flood damage in New Orleans after Hurricane Katrina. In addition, Allstate was ordered by a federal court in Louisiana to pay homeowner Robert Weiss $561,000 for loss of his property plus $2.25 million for mental anguish and penalties.

James M. Craig, president of the American Institute of Marine Underwriters, advised the Committee of AIMU's forthcoming 2007 Marine Insurance Issues Seminar in New York City.

John Woods, 2006-2007 Chairman of the Association of Average Adjusters of the United States, advised that the Association had recently amended its By-Laws. Section 1 now allows a marine hull claims professional with two years experience as an adjuster or as an underwriter's claims examiner/adjuster to become a full member of the Association upon successful completion of an exam.

George Zacharkow, Chair of the Subcommittee on Cargo Insurance, reported that he is currently working on the "All Risks Annotation Project" and is looking for volunteers. He indicated that there are fewer reported cargo cases in general. He reported on a recent case, *Source Food Technology, Inc. v. U.S. Fidelity and Guaranty Company*, 465 F.3d 834 ($8^{th}$ Cir. 2006). Source Food, a company that sells cooking oil, had a sole supplier of beef products in Canada. Due to the general concerns over "mad cow disease," the U.S. Department of Agriculture barred imports from Canada. Source Food submitted a claim under its insurance policy for property and business interruption. The policy stated it would pay for loss incurred due to action of civil authority resulting in "direct physical loss to property." The Eighth Circuit Court of Appeals held that Source Foods did not experience direct physical loss to its property and therefore denied coverage.

John F. Ryan reported on a recent case in which he participated, *North American Foreign Trading Corp. v. Mitsui Sumitomo Insurance USA, Inc.*, 477 F. Supp. 2d 576 (S.D.N.Y. 2006). The cargo underwriter, when asked by the insured about the status of the claim, advised the insured that it was still investigating the claim. In reality, the underwriter was preparing to decline the claim. At the same time, the policy's time to bring suit expired

and the case became time-barred. The Court held that because the underwriter's misrepresentation about the status of the claim had lulled the insured into not filing suit, the underwriter was estopped from asserting a time-limitation defense.

John Woods, Chair of the Subcommittee on Hull and P&I Insurance, discussed the holding in *Sentry Select Insurance v. Royal Insurance*, 481 F.3d 1208 (9th Cir. April 6, 2007). A crew member on a barge carrying prefabricated homes was borrowed after houses were discharged from the barge to ride on top of the homes while they were trucked. His job was to lift power lines over the homes as they were encountered. The lines were allegedly de-powered. The seaman was seriously injured as he lifted a power line still carrying current. Royal Insurance had issued a maritime employer's liability policy and argued that *uberrimae fidei* applied and that the assured failed to advise underwriters of a material risk, *i.e.* lifting power lines. The United States Court of Appeals for the Ninth Circuit held that the policy was not a maritime policy, and therefore the doctrine of utmost good faith did not apply. However, the court found that the accident was not covered within the policy terms and therefore denied coverage. Thereafter, a brief discussion was held involving whether a marine general liability policy is to be treated as a maritime or non-maritime insurance contract. The answer is a legal determination to be made by the Judge, subject to the jurisdiction and the wording of clauses contained in the policy.

Vivian Frew of Markel International briefed the Committee on recent developments in the joint Scottish and English Law Commission's work on changes to the law in respect of insurance contracts. The focus of the Commission's work is the consumer market. The Commission issued three papers on misrepresentation and nondisclosure, intermediaries and pre-contract information, and warranties. The greatest concerns are the issues of non-disclosure and the law pertaining to breach of warranty. The current law in the U.K. requires disclosure of all "material" facts prior to conclusion of the policy, even if the insurer has not asked the relevant question. Currently, insurers may void a policy in the event of a breach of warranty regardless of whether or not it is causative of the loss.

Further, disputes arising from the above warranty/disclosure issues often involve allegations about what an intermediary said or did during the sales process. The third paper therefore looks at the status of intermediaries, for whom they act and in what circumstances. The common law does not make a distinction between consumer and business insurance contracts. The Marine Insurance Act of 1906 applies only to marine insurance as defined under the

Act. The Commission is asking for comments regarding the need for reform of marine insurance. Ms. Frew concluded by suggesting that reforming the Marine Insurance Act would not be beneficial, would create confusion, and would considerably reduce the competitiveness of the London Market.

The Committee had the pleasure of being addressed by Mary Cervati of Anderson Kelly Associates. She provided insight on how to train the ship's officers to handle personal injury claims and how to investigate shipboard claims.

Cary R. Wiener, Secretary
Gene B. George, Vice Chairman

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

### The Supreme Court

Since *forum non conveniens* decisions impact on many maritime cases, it is worth noting that the Supreme Court has held that a court may dismiss on *forum non conveniens* grounds before deciding whether it has subject matter or personal jurisdiction over a defendant. *Sinochem Int'l Co., Ltd. v. Malaysia Int'l Shipping Co.*, 127 S.Ct. 1184 (2007).

In *Norfolk Southern Ry v. Sorrell*, 127 S.Ct. 299 (2007) discussed previously, the Supreme Court held in an FELA case (and thus in a Jones Act case) that as to contributory negligence the same standard applied as the negligence claim against the employer. Did the employer or employee contribute in whole or in part to the injury? Left open was the "slight" negligence charge of *Rogers v. Missouri Pacific Ry Co.*, 352 U.S. 500 (1957). The case was remanded and could be affirmed below.

### Punitive Damages

The Supreme Court granted certiorari in a case in which a Louisiana appellate court allowed exemplary damages of $112,290,000, twice the amount of a general damage award, in a toxic contamination case. This reduced the jury award of $1 billion, based on a determination that it was excessive. The defendant based its petition on the fact that the award was based on harm to the public, which had been objected to in *Philip Morris USA v. Williams*, 127 S.Ct. 1057 (2007), in which the Supreme Court said that punishment should only involve harm to persons before the court. The

Supreme Court vacated the Louisiana judgment and remanded for further consideration in light of the *Philip Morris* case. *Exxon Mobil Corp. v. Grefer*, 127 S.Ct. 1371 (2007), case below, *Grefer v. Alpha Technical*, 901 So.2d 1117 (La. App. 4th Cir. 2005), writ den., 925 So.2d 1248 (La. 2006).

### Jones Act, Unseaworthiness, Maintenance and Cure

A Jones Act case ended in summary judgment in favor of the defendant, because there was only conjecture and inadmissible expert evidence. The unseaworthiness claim for assault was also denied, because there was no evidence of crew members' savage and vicious nature. The maintenance claim was allowed for a question of fact as to when plaintiff received an injury. *Camacho v. Icicle Seafoods, Inc.*, 204 Fed. Appx. 625 (9th Cir. 2006).

### Jones Act and Arbitration Clause

Plaintiff received some compensation in a Jones Act case but agreed that further compensation required arbitration. Plaintiff claimed a second injury was involved and pled the Federal Arbitration Act, denying arbitration in a seaman's employment contract and the FELA. The arbitration agreement was upheld. *Terrebonne v. K-Sea Transp. Corp.*, 477 F.3d 271, 2007 AMC 442 (5th Cir. 2007).

### Jones Act/Collateral Source/Double Payment

In *Wendelboe v. SeaRiver Maritime, Inc.*, 950 So.2d 826 (La. App. 1st Cir. 2006), the issue was whether a Jones Act employer could offset disability benefits against any future judgment. The appellate court upheld the employment benefits package allowing the avoidance of a double recovery. The court held that otherwise the employer would be reluctant to provide disability benefits.

### Jones Act/Longshore Act

A crane operator on a barge sued under the Jones Act and alternatively under the Longshore Act against his employer. Access was by a ramp-float-skiff. The Ninth Circuit held it was a question of fact as to whether plaintiff was a Jones Act seaman with a substantial connection to a vessel in navigation. Whether activities occur at sea is important. Issues of fact precluded summary judgment on status of plaintiff and the ramp as gangway and the issue of whether it was unreasonably dangerous. *Scheuring v. Traylor Bros., Inc.*, 476 F.3d 781 (2007).

### Maintenance and Cure

A crew member recovered under the Jones Act and on an unseaworthiness claim and was held not contributorily negligent. However, he had concealed material medical facts and was denied maintenance and cure, although the court did not deny other recoveries. *Gautreaux* was applied on the Jones Act claim, i.e., slight negligence causation. The maintenance defense is the "McCorpen" defense of the Fifth Circuit, *McCorpen v. Central Gulf SS Corp.*, 396 F.2d 547 (1968); *Brown v. Parker Drilling Offshore Corp.*, 410 F.3d 166, 178 (5th Cir. 2005). The case is *Johnson v. Cenac Towing, Inc.*, 468 F.Supp.2d 815 (E.D.La. 2006).

### Longshore Act

Attorney's fees were allowed where an exchange of letters sufficed for the requirement of an informal conference. The BRB decision was affirmed. *Newport News Shipbuilding v. Office of Director*, 477 F.3d 123 (4th Cir. 2007).

### Pre-Judgment Interest

The Ninth Circuit has held that in a maritime case with diversity, the prejudgment interest rate should be fixed under state law. The case involved an oil spill in Alaskan waters. *Sea Hawk Seafoods, Inc. v. Exxon Corp.*, 484 F.3d 1098 (9th Cir. 2007).

See also, *Grande v. St. Paul Fire and Marine Ins. Co.*, 365 F.Supp.2d 57 (D.Me. 2005) (vessel damage claim vs. insurer and agent; accrual pursuant to Maine law; interest set at 3% above T-bill rate).

### Seaman's Protection Act

We previously reported a case involving a whistle blower recovery under 45 U.S.C. §2114, 48 C.F.R. §10.501(b) and §15.915: *Gaffney v. Riverboat Services*, 451 F.3d 424 (7th Cir. 2006). *Gwin v. American River Transportation Co.*, 482 F.3d 969, 2007 A.M.C. 977 (7th Cir. 2007), allowed recovery of compensatory and punitive damages when a towboat master refused to pilot a towboat with an unsafe number of dangers.

On a claim that his suit played a substantial part in his termination of employment, plaintiff was held not to have proven his case. Summary judgment was granted against him, *Hyman v. Transocean Offshore USA, Inc.*, 207 Fed. Appx. 485 (5th Cir. 2006).

### "Vessel" and Some Jones Act Decisions

In *Jordan v. Shell Offshore, Inc.*, 2007 WL 128313, 2007 U.S. Dist. LEXIS 2192 (S.D.Tex. 2007), a tension leg platform towed to its current location was held to be a Jones Act vessel. It would be towed in the future.

Where plaintiff worked on a tugboat, derrick boat, and work raft, he was a Jones Act seaman. The pontoon work raft was a vessel. He was connected to a vessel over 30 percent at the time. *Arnold v. Luedtke Engineering Co.*, 196 Fed. Appx. 331 (6th Cir. 2006).

### Non-Vessel Cases

A barge converted to a breakwater and permanently fixed was not a vessel. *Ingrassia v. Marina Del Ray, LLC*, 2007 A.M.C. 985 (E.D.La. 2006), reh'g denied, 2007 WL 274801 (E.D.La. 2007).

Where a mobile drilling unit was towed from Singapore, and plaintiff was injured during further construction, he was not a Jones Act seaman. *Hyman v. Transocean Offshore USA, Inc.*, 207 Fed. Appx. 485 (5th Cir. 2006).

### Casino Cases

Whether the general maritime law and Jones Act applies involves the question of whether a floating casino has been tied up for a long period of time and whether it is navigable and a "vessel".

*De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185 (5th Cir. 2006), held that the boat was not a "vessel" providing admiralty jurisdiction where it has been tied up for several years and its utilities were land-based. Contra: "indefinite" is not "permanent". *Tagliere v. Harrah's*, 445 F.3d 1012 (7th Cir. 2006). A floating casino with utilities from the dock was a Jones Act vessel. *Booten v. Argosy Gaming Co.*, 848 N.E.2d 141 (Ill. App. Ct. 2006). It was moved for cleaning and had life-saving equipment and a marine crew and captain.

### Jurisdiction

A contract to launch a vessel is within the admiralty jurisdiction. The case also allowed ancillary jurisdiction for shoreside negligence. *Mahony v. Lowcountry Boatworks,* 465 F.Supp.2d 547 (D.S.C. 2006).

An asbestos case was brought by decedent's estate alleging exposure both on land and sea. The court held the sea time exposure within the admiralty jurisdiction case, but the land-based claim was a matter of state law. A jury case was allowed as the maritime claim was a diversity case. *Bartel (Rich) v. A-C Product Liability Trust*, 461 F.Supp.2d 600, 2006 A.M.C. 2816 (N.D.Ohio 2006).

## Passenger Cases

In *Paul v. Holland America Lines*, 463 F.Supp.2d 1203 (W.D.Wa. 2006), the Athens Convention limitation was upheld where no U.S. port was involved. A loss of consortium claim was denied, citing *Chan v. Society Expeditions Inc.*, 39 F.3d 1398, 1408 (9th Cir. 1998); contra. *Wartman v. Commodore Cruise Lines*, 100 F.3d 943 (2d Cir. 1998) (wife sues for loss of consortium).

## Medical Malpractice on a Passenger Vessel

Florida's Supreme Court held that respondent superior did not apply in *Carnival Corp. v. Carlisle*, 953 So.2d 461, 2007 A.M.C. 305 (Fla. 2007). It followed *Barbetta v. S.S. Bermuda Star*, 848 F.2d 1364 (5th Cir. 1988), rather than *Nietes v. American President Lines*, 188 F.Supp. 219 (N.D.Cal. 1959). Harmony with federal precedent was part of the reasoning.

## The Venue Clause

The ship's ticket venue clause requiring suit in federal court was upheld by Florida's appellate court. *Carnival Corp. v. Booth*, 946 So.2d 1112 (Fla. Dist. Ct. App. 2006); contra, *Sullivan v. Ajax Navigation Corp.*, 881 F.Supp. 906 (S.D.N.Y. 1995) (jury upheld).

## Suit v. Ship Repairer

A marine repair service sued house barge owner for repair; owners counter claimed. In a bench trial a breach of a warranty of workmanlike performance was adjudicated. For work completed, quantum merit was given. *Miller Boat Works, Inc. v. Unnamed 52' House Barge*, 464 F.Supp.2d 127 (E.D.N.Y. 2006). The case was an admiralty case, *in rem*, and an oral contract was upheld.

## Transportation Worker Identification Credential (TWIC)

March 2007 started the enrollment of port side workers under TSA requirements with Lockheed Martin as prime contractor. The card may not

be the only identification card; some states may have different requirements. See the Journal of Commerce 3/12/07. Newspaper reports stated that a July 1 deadline may be missed. Over $99 million dollars has been spent so far. Errata: Our last report cited *Rebara v. Crew Boats*, the proper name for the plaintiff is Rebardi. The case involved a death in state waters allowing a punitive damage claim.

**Limitation of Liability**

Limitation was denied in a Jones Act unseaworthiness suit. Plaintiff was injured in lifting a fuel transfer hose. The captain was familiar with an unsafe procedure regularly followed for years. *Broussard v. Slolt Offshore, Inc.*, 467 F.Supp.2d 668 (E.D. La. 2006).

A group of college girls rented a pontoon boat on Lake Havasu, which the court found to be a navigable waterway. The rental agreement stipulated that only the renting individual could operate the boat, and that individual was prohibited from operating the boat while intoxicated. On the second day of the rental, a passenger fell out of the boat and was injured when another individual (not the renter) slowed the boat abruptly upon entering a "no wake" zone. The injured passenger filed suit in state court, and the boat owner responded by filing a limitation action in federal court. The injured party (a minor) and her parents answered the limitation complaint but never filed a claim in the limitation action. When the boat owner sought summary judgment, the injured party sought leave to perform additional discovery in an effort to muster some evidence against the owner. Finding that they had not even filed a claim or provided the court with an affidavit as to what they hoped to uncover through this discovery, the court denied the motion to conduct additional discovery and entered an order exonerating the vessel owner. *In re Fun Time Boat Rental & Storage, LLC*, 431 F.Supp.2d 993, 2006 A.M.C. 769 (D. Ariz. 2006).

In a rather strange opinion, the district court granted summary judgment and exonerated the vessel owner, finding that claimant seaman had simply given too many different versions of how he fell on the tugboat, and therefore he did not meet his burden of proving that his injuries were caused by the presence of oil on the steps of the tug. The court then proceeded to "volunteer" its opinion that in the event of a reversal, it would deny the tug owner's alternative motion seeking a determination that its liability should be limited, citing the photographs of the 45-year-old tug, which "looks like it was in obvious need of close attention." *In re Vulcan Materials (Tug CHANCE)*, 412 F.Supp.2d 566, 2006 A.M.C. 1562 (E.D. Va. 2005).

Recognizing that the courts are divided on the issue, the court held that claims against the master or crew of a vessel cannot be enjoined by reason of a limitation action by the vessel owner. In light of the fact that many P&I policies provide coverage to the master, as well as the ship and its owner, this is likely to cause some concern amongst insurers. *In re B&H Towing, Inc.*, 434 F.Supp.2d 383, 2006 A.M.C. 1792, (W.D. Va. 2006).

The Fifth Circuit reversed a decision by the District Court in Mississippi refusing to lift the limitation stay so that the single claimant (who had made all of the appropriate limitations) could proceed in the federal court in Texas, which was his forum of choice. *Inland Dredging v. Sanchez*, 468 F.3d 864, 2006 A.M.C. 2559 (5th Cir. 2006).

Because the cause of the claimant's death during a "snuba-diving" accident was unknown, the vessel owner's motion for summary judgment on the issue of privity and knowledge (i.e. right to limitation), must be denied. This is contrary to the holding set by the First Circuit in Carr v. PMS Fishing Corp, 1999 A.M.C. 2958, in which a fishing vessel's owner was entitled to limit where the cause of the vessel's disappearance was unknown. *In re Morning Star Cruises, Inc.*, 2006 A.M.C. 2845 (D. Haw. 2006).

When the captain warned his passengers that they should stay in the salon until they passed the outer bar of the inlet due to expected swells, passenger injured in cabin area when thrown about by swells did not prove that his injuries were caused by the negligence of the captain, and therefore the owner was exonerated. *In re Reel Action Charters*, No. 05-1194 (E.D.N.Y. Sept. 27, 2006).

A commercial fishing vessel had a collision with an oil platform in the Gulf. Although the vessel's captain was found to be partially at fault, the owner was allowed to limit its liability, as it had hired a competent and qualified captain, and thus did not have privity or knowledge of the negligence that contributed to the accident. *In re Omega Protein, Inc.*, 2007 WL 803934 (W.D. La. 2007).

## FORMAL REPORT OF THE COMMITTEE ON RECREATIONAL BOATING

The Recreational Boating Committee met on May 3, 2007 at the New York Yacht Club with 35 members and guests present and two members participating by conference call.

The Committee received a status report on the 2002 U.S. Customs ruling that defined the term "passenger" to include non-paying business guests for the purpose of the Passenger Vessel Services Act ("PVSA"). Under the ruling, the owner of a foreign-built recreational vessel ineligible for U.S. documentation with a coastwise endorsement could be charged with a violation of the PVSA if business guests are aboard. Penalties include monetary fines and potential forfeiture. The Committee is not aware of any enforcement actions to date by the Customs Service. The Committee will continue tomorrow on the issue and a working group will return recommendations to the Committee at the Fall 2007 Meeting regarding the possible application to Customs for issuance of a modified ruling.

The Committee received a presentation from Robert deMatta and Carol Roberts of AON regarding a broker's view of the recreational boating insurance market with an emphasis on underwriting requirements and common pitfalls by owners in failing to fully disclose all material information to underwriters. The Committee has noted a marked increase in reported insurance coverage litigation involving recreational boats over the past two years. We are grateful to Mr. deMatta and Ms. Roberts for their timely and informative representation.

The Committee discussed the Small Vessel Security Summit scheduled for June 19th and 20th, 2007 by the Department of Homeland Security. The meeting will address security issues involving recreational vessels and other small craft and is by invitation only. The Association was apparently not invited to attend, but the Committee has secured one invitation and a Committee member will attend the Summit.

The Committee considered a proposal by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") to extend the Uniform Certificate of Title Act (now applicable to automobiles) to watercraft. Following an introduction by member Robert Fisher, the Committee considered and voted to endorse a proposed letter to be issued to the NCCUSL study group by President Burrell that had been prepared and approved by the Marine Finance Committee on Wednesday. The letter expresses the Association's interest in the project and will ensure that the Association will have input during the drafting process. A joint working group consisting of members of the Sub-Committee on Yacht Finance and the Recreational Boating Committee will be formed to study the issues. Any Committee member who is interested in working on this project is urged to contact the Chair.

Finally, the Committee received a review of the cases reported in the latest edition of the Committee's Newsletter, Boating Briefs, now in its 16th year of publication. The Chair wishes to recognize the current editor, Todd Lochner, and the associate editor, Daniel Wooster, for their efforts. All past issues of the newsletter have now been posted on the public side of the Association's website. A digest of all cases reported since 1991 is currently being prepared and will be posted on the Committee's section of the website when complete.

Frank P. DeGiulio, Chair

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

Held at Jones Walker
201 St. Charles Street, 51st Floor
New Orleans, Louisiana
on
March 13, 2007
9:30 a.m.

The March 13, 2007 meeting was called to order by President Lizabeth L. Burrell at 9:30 a.m. In addition to President Burrell, the following officers also were present:

Warren J. Marwedel, First Vice President
Patrick J. Bonner, Second Vice President
James W. Bartlett, III, Secretary
Robert G. Clyne, Treasurer
Philip A. Berns, Membership Secretary
Thomas S. Rue, Immediate Past President

The following directors also were present:

Joe E. Basenberg
Dennis L. Bryant
David J. Farrell, Jr.
Grady S. Hurley
Allan R. Kelley
Stephen V. Rible
John M. Ryan
Harold K. Watson
John M. Woods
Sandra L. Knapp

**SECRETARY'S REPORT**

Secretary James W. Bartlett, III of Baltimore reported that he had drafted a revision to By-Law 504 to address current methods of communication. He also proposed to make other revisions to the MLA By-Laws to improve and modernize the wording of the By-Laws. He will circulate a redline version of the proposed, revised By-Laws to the members of the Board before its next meeting.

Upon motion duly made and seconded, the minutes of the October 5, 2006 meeting of the Board of Directors were unanimously approved and

accepted. The minutes of the October 5, 2006 meeting of the Board of Directors will be published in the Fall 2006 issue of the PROCEEDINGS.

**TREASURER'S REPORT**

Treasurer Robert G. Clyne of New York presented the Treasurer's report for the three months ended October 31, 2006. He reported that the MLA is in good financial shape. As of October 31, 2006, the MLA had $318,655.30 in cash and investments.

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 31, 2006 will be appended to the original of these minutes.

**MEMBERSHIP SECRETARY'S REPORT**

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

Glenn W. Alexander of Lake Charles, Louisiana
J.W. Beattie of Portland, Oregon
Martin S. Bohman of Baton Rouge, Louisiana
Jonathan Griffin Brush of Beaumont, Texas
Richard T. Califano of New York, New York
David J. Cortes of Durham, North Carolina
Robert Crowder of Los Angeles, California
Justin E.D. Daily of San Diego, California
C. Ryan Eslinger of Jacksonville, Florida
Ryan Daniel Gilsenan of Charleston, South Carolina
John M. Holland of Huston, Texas
Carolyn Jo Kaye of San Diego, California
Robin Richard Lambourn of Huston, Texas
Kevin J. McCloskey of San Pedro, California
Kyong Chu Min of Paramus, New Jersey
Christopher M. Panagos of New York, New York
Glen R. Piper of Long Beach, California
Lissa D. Schaupp of New York, New York
Lisa L. Sechelski of Houston, Texas
Arthur Alan Severance of New Orleans, Louisiana
Robert A. Williams of Washington, DC

Mr. Berns reported that two applications for reinstatement as Associate members had been received, from Steven M. Stancliff of Norfolk, Virginia and Loren Andrea Fridel of Easton, Maryland. Mr. Berns moved for the reinstatement of those two applicants, the motion was seconded, and by a unanimous vote of the Board of Directors, Steven M. Stancliff and Loren Andrea Fridel were reinstated as Associate members.

No applications for Non-Lawyer, Judicial, or Academic members were submitted.

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

John Hays of Comptche, California
Andrew T. Martinez of New Orleans, Louisiana
Lloyd C. Nelson of New York, New York
Thomas J. Boyle of San Rafael, California
John G. Holland of Cairo, Illinois

After the admission of the 21 Associate members and the reinstatement of two Associate members, the total membership of the MLA is 3,105.

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.

## BOARD SUBCOMMITTEE REPORTS

### Committees

Second Vice President Patrick J. Bonner of New York reported that the Subcommittee on Committees had a telephone meeting on March 5, 2007. It was noted that the MLA had partially adopted the Subcommittee's recommendation that Committee meetings of Committees with overlapping membership be coordinated as to time and place. The issue of call-in numbers for telephone participation in Committee meetings will be the subject of a report by First Vice President Marwedel.

### Finance

Treasurer Clyne reported that the Subcommittee on Finance held a telephone conference on March 1, 2007.

One of the topics discussed by the Subcommittee was whether an informal budget in the form of a list of expected expenditures should be developed and maintained. This sparked an extended discussion among the Board members. The Subcommittee will consider the comments expressed by the Board members and report back to the Board at its next meeting.

### Membership

Membership Secretary Berns, Chair of the Subcommittee on Membership, feels that the recently held fall meetings in New Orleans and San Francisco were successful in getting younger members of the MLA to attend and participate.

The Subcommittee reported that Board Member David J. Farrrell, Jr. held brown-bag lunches in January and February in Boston, Massachusetts; Bristol, Rhode Island; and Portland, Maine in which MLA member input was solicited and potential members were recruited.

Board member John M. Ryan of Norfolk, Virginia organized a reception for MLA members in Norfolk, Virginia on March 8, 2007 to increase MLA awareness and memberships.

## DISCUSSION ITEMS AND REPORTS

### Continuing Legal Education

The administration of continuing legal education programs by the MLA has become a concern. Attaining accredited provider status is not a problem. Rather, the problem is mechanics, because each state seems to have different requirements for forms, signing in and out of the CLE seminar or meeting, and other requirements. President Burrell has appointed Michael J. Ryan of New York as Chair of the Committee on Continuing Legal Education.

### Website

First Vice President Warren J. Marwedel reported that the project to digitalize all of the MLA's documents, which is being coordinated through

the University of Hawaii, is about to begin. Secretary Bartlett's office, which currently has custody of the documents, is arranging to send them to Hawaii. Once digitalized, the MLA documents will be available through the Law Library Microform Consortium and will also be available on the MLA website.

First Vice President Marwedel is analyzing free conference call websites that might be utilized for conference call participation in MLA Committee meetings. He will report further on this at the next Board meeting.

## Liaison Reports

The Board members reported on the Standing Committees for which they serve as liaisons. Several Board members reported that efforts were continuing to coordinate schedules and meetings of Committees having related interests and overlapping memberships. Some Committees are holding joint meetings.

## UNCITRAL Draft Instrument

President Burrell reported that she had received a report from the MLA representatives to the UNCITRAL Working Group, Chester D. Hooper and Vincent M. DeOrchis. The most recent draft of the UNCITRAL draft instrument is now posted on the UNCITRAL website. UNCITRAL will meet in New York on April 16–27, 2007 but will not discuss jurisdiction or arbitration during that meeting. It is anticipated that jurisdiction and arbitration will be discussed at an UNCITRAL meeting in Vienna in October 2007.

The current UNCITRAL draft instrument, and particularly its jurisdiction and arbitration provisions, which are found at chapters 15 and 16, articles 69–81, will be the subject of discussions at the MLA General Meeting on May 4, 2007.

## *Ad Hoc* Committee on Environmental Crimes

Immediate Past President Thomas S. Rue and President Burrell reported that industry representatives had developed suggested "best practices" guidelines with respect to matters involving alleged environmental crimes. It is anticipated that the industry representatives will meet with government representatives in the near future.

**ABA House of Delegates**

James F. Moseley, the MLA Delegate to the ABA House of Delegates, has submitted two reports relating to the meeting of the ABA House of Delegates held on February 12–13, 2007 in Miami.

**Comité Maritime International**

Immediate Past President Rue and First Vice President Marwedel will attend the CMI Assembly and Symposium to be held in Dubrovnik, Croatia, May 10–12, 2007.

President Burrell has received a CMI questionnaire regarding a charterer's right to limit liability, a subject that is to be studied by the CMI. She has referred the questionnaire to the Committee on Marine Torts and Causalities to draft a response.

**Fall 2008 Site Selection Committee**

Past President Raymond P. Hayden has been appointed by President Burrell as Chair of the Fall 2008 Site Selection Committee, which will evaluate possible locations for the Fall 2008 Meeting. MLA members from several candidate cities also have been appointed to this Committee.

**Nominating and Application Forms**

The forms for nominating officers and directors and application forms for membership are now posted on the MLA website.

**MLA Amicus Participation**

President Burrell reported that the MLA's motion for leave to file an amicus brief in *Vamvaship Maritime Ltd. v. Little Rose Trading LLC* had been granted, and an amicus brief was filed. A motion by the Federal Reserve Bank of New York and The Clearing House Association L.L.C. to file a supplemental letter brief in response to the amicus brief of the MLA also was granted. Just prior to the Board Meeting, however, the parties settled the case.

**Presidential Activities**

President Burrell reported that she had attended and served as a judge at The Fourteenth Annual Judge John R. Brown Admiralty Moot Court Competition in San Francisco, March 8–10, 2007.

Future Officer and Board Meetings:

A. MLA Spring Meeting, New York, New York—May 2–4, 2007

B. MLA Board Meeting, Portland, Maine—August 3–4, 2007.

C. MLA Fall Meeting, Sanibel Harbour Resort & Spa, Fort Myers, Florida—October 24–28, 2007.

There being no further business to come before the Board of Directors, the meeting was adjourned at 12:36 p.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 Tweed Room
Association of the Bar of the City of New York
42 West 44th Street
New York, New York
on
May 3, 2007
9:30 a.m.

The May 3, 2007 meeting was called to order by President Lizabeth L. Burrell at 9:30 a.m. In addition to President Burrell, the following officers also were present:

Warren J. Marwedel, First Vice President
Patrick J. Bonner, Second Vice President
James W. Bartlett, III, Secretary
Robert G. Clyne, Treasurer
Philip A. Berns, Membership Secretary
Thomas S. Rue, Immediate Past President

The following directors also were present:

Joe E. Basenberg
Dennis L. Bryant
John D. Kimball
Sandra L. Knapp

Christopher O. Davis
David J. Farrell, Jr.
Grady S. Hurley
Allan R. Kelley
Stephen V. Rible
John M. Ryan
Harold K. Watson

**SECRETARY'S REPORT**

Secretary James W. Bartlett, III reported that he had distributed the minutes of the March 13, 2007 meeting of the Board of Directors prior to this meeting. Upon motion duly made and seconded, the minutes of the March 13, 2007 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the March 13, 2007 meeting of the Board of Directors will be published in the Spring 2007 issue of the PROCEEDINGS.

**TREASURER'S REPORT**

Treasurer Robert G. Clyne presented the Treasurer's report for the three months ended January 31, 2007. He reported that the finances of the MLA are in good shape, with $254,497.63 in cash and investments.

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 31, 2007 will be appended to the original of these minutes.

**MEMBERSHIP SECRETARY'S REPORT**

Membership Secretary Philip A. Berns reported that 16 applications for Proctor membership had been received and had been recommended by the Proctor Committee for elevation to that status. Upon motion duly made and seconded, the applications of the following 16 Associate members were approved for Proctor status by a unanimous vote of the Board of Directors:

Christopher A. Abel of Norfolk, Virginia
William R. Bennett, III of New York, New York
David M. Bohonnon of New Haven, Connecticut
Kay Wynne Bohonnon of New Haven, Connecticut
Katharina Kristin Brekke of Norfolk, Virginia
Mark Buhler of Orlando, Florida
George M. Chalos of Port Washington, New York
Michael E. Crowley of New York, New York
John S. Farmer of St. Louis, Missouri

Erik D. Garza of Houston, Texas
William P. Glenn, Jr. of Galveston, Texas
Neal J. Kling of New Orleans, Louisiana
Philip M. Lempiere of Seattle, Washington
Patrick Owens McAleer of Boston, Massachusetts
Robert L. Reeb of Chicago, Illinois
Paul F. Tecklenburg of Charleston, South Carolina

An application for reinstatement and for elevation to Proctor membership was received from an active member of the MLA who was recalled to active military duty for one year. He had been placed on inactive status by the Treasurer. The Proctor Committee recommended the reinstatement and elevation of Randall B. Geuy of Houston, Texas to Proctor membership. Upon motion duly made and seconded, the application for reinstatement and elevation to Proctor membership of Randall B. Geuy was approved unanimously.

Mr. Berns reported that 17 applications for Associate membership had been received. Upon motion duly made and seconded, the applications of the following 17 Associate members were approved unanimously.

Talcott N. Bates of San Francisco, California
Michael L. Bono of New Orleans, Louisiana
Kevin C. Cain of Boston, Massachusetts
Frederick E. Connelly, Jr. of Boston, Massachusetts
Lauren Cozzolino Davies of Southport, Connecticut
Corey R. Greenwald of New York, New York
Ji Hi Jung of New York, New York
Terence G. Kenneally of Boston, Massachusetts
Jennifer S. Kozar of New York, New York
Jeffrey R. Krantz of New York, New York
Joseph F. Kulesa of Philadelphia, Pennsylvania
Elizabeth R. Megginson of Washington, D.C.
Michaela Elizabeth Noble of New Orleans, Louisiana
Jorge A. Rodriguez of New York, New York
Andrew Mark Stakelum of New Orleans, Louisiana
Bryant Matthew Struble of St. Louis, Missouri
Eric Christopher Thiel of Tampa, Florida

An application for reinstatement has been received from a former Non-Lawyer member, Terry Patrick Campbell of New York, New York. Upon

motion duly made and seconded, the application for reinstatement of Terry Patrick Campbell was approved unanimously.

Mr. Berns reported that the Non-Lawyer Committee had approved the applications of three persons for Non-Lawyer membership. Upon motion duly made and seconded, the applications of the following persons for Non-Lawyer membership were approved unanimously:

Renan L. Alamina of New York, New York
Richard J. Decker of New York, New York
David Tan of New York, New York

No applications for Judicial membership were submitted.

An application was received for Academic membership for Adjunct Professor William K. Sheehy of Yeditepe University, School of Law, Istanbul, Turkey. Upon motion duly made and seconded, the application of William K. Sheehy for Academic membership was approved unanimously.

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

John Hays of Comptche, California
Andrew T. Martinez of New Orleans, Louisiana
Lloyd C. Nelson of New York, New York
John G. Holland of Cairo, Illinois
Thomas J. Boyle of San Rafael, California
H. Lee Lewis of Houston, Texas
Gilbert S. Fleischer of Rockville, New York
Charles B. Achuff of Bala Cynwyd, Pennsylvania
William S. Busch of New York, New York
Clarance E. Hagglun of Minneapolis, Minnesota
John O'Kane, Jr. of Honolulu, Hawaii

After the admission of 17 Associate members, three non-lawyer members, one Academic member, and the reinstatement of one Non-lawyer member, the total membership of the MLA is 3,023.

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.

## BOARD SUBCOMMITTEE REPORTS

### Committees

Second Vice President Patrick J. Bonner of New York reported that one Standing Committee had noted that its meeting conflicted with the Thursday morning meeting of the Board of Directors. The Subcommittee on Committees will address that and any other concerns the Standing Committees may have concerning scheduling of meetings.

### Finance

Treasurer Clyne reported that it is the consensus of the Subcommittee on Finance that the MLA needs a budget in some form. The Subcommittee will draft a list of projected expenses before the Board meets again in August.

### Membership

The Subcommittee on Membership, chaired by Membership Secretary Berns, presented a report containing recommendations with respect to the parameters governing Law Student membership. After discussion by the Board of Directors, the following features of Law Student membership were adopted unanimously by the Board:

a. Membership will be annual, based on the school year, with dues of $25 per school year. Law Student membership will terminate at the end of the calendar year in which the Law Student member graduates or ceases to be a student in good standing at the school.

b. An applicant for Law Student membership must express an interest in admiralty law and must be sponsored by a law school professor, a law school administrative official, or an MLA member.

c. Law Student members will be provided with all MLA publications, notices, and mailings but solely by e-mail. They will not have MLA website portal access unless involved in a particular approved project and then only to areas solely and specifically devoted to that project. Law Student members will be non-voting members of the MLA but may attend all open Standing Committee meetings.

### Website

First Vice-President Warren J. Marwedel, chair of the Subcommittee on the Website, reported that the project of digitalizing all MLA numbered documents had begun, with the shipment of two boxes of documents from Secretary Bartlett's office to the University of Hawaii. The Subcommittee is investigating other possible changes to the website, including a photo gallery and enhanced security.

## DISCUSSION ITEMS AND REPORTS

### Liaison Reports

The Board members reported on how the Standing Committees for which they serve as liaisons handled assigned meeting times, meeting arrangements, agendas, and teleconferencing. On the whole, the meeting arrangements seem to work well, although there were some problems with meeting conflicts. Most Committees had agendas in the hands of their members well before the meetings, and teleconferencing was utilized by several of the Committees.

### Fall 2008 Site Selection Committee

Robert J. Zapf of Los Angeles, a member of the Fall 2008 Site Selection Committee, accompanied by fellow Committee members Forrest Booth and John A. Edginton, reported that the Committee met on Monday, April 30, 2007, by conference call. Among the sites discussed were Savannah/Charleston and Long Beach. The Site Selection Committee recommended Long Beach for the Fall 2008 meeting and then proceeded to outline some of the possible arrangements. No Board action was taken.

### City/Regional Luncheons

Sandra L. Knapp reported that a lunch meeting of Philadelphia-area MLA members was held at the offices of Palmer Biezup & Henderson on April 18, 2007. Both long-time MLA members and younger members attended, and various topics relating to maritime practice, CLE programs in connection with MLA Committee meetings, and the recent fall meetings in cities other than New York were discussed.

**Committees**

A motion was made that the requirement of By-Law 502 that only a Proctor or Non-Lawyer member can serve as a Committee Chair or Vice-Chair be waived for Carolyn Elizabeth Meers, so that she may serve as Vice-Chair of the Special Committee on Continuing Legal Education. The motion was seconded and passed unanimously.

President Burrell announced that she had created a new Special Committee for In-House Counsel. Unlike the Standing Committees, membership on this Committee will be by appointment of the President, with the requirement that the member be an in-house counsel for a company.

**UNCITRAL Draft Instrument**

President Burrell announced that there will be a discussion at tomorrow's meeting concerning the current status of the UNCITRAL draft instrument. The MLA representatives to the UNCITRAL Working Group, Chester D. Hooper and Vincent M. DeOrchis, will report, and the floor will be thrown open for discussion.

**Letters Proposed by Committee on Marine Finance**

Sandra L. Knapp, Board liaison to the Committee on Marine Finance, reported that the Committee, along with its Subcommittee on Yacht Finance and the Committee on Recreational Boating, was proposing two letters to be sent by President Burrell. One letter would be to Professor Alvin C. Harrell, encouraging the National Conference of Commissioners on Uniform State Laws to move forward with a project to create a Uniform Certificate of Title Act for vessels. The second letter would be to Admiral Thad W. Allen, Commandant of the United States Coast Guard, requesting that the Coast Guard develop and publish for public comment proposed regulations relating to title evidence, mortgages and liens, and documentation of vessels; hull identification numbers; and documentation of vessels owned by limited liability companies. Drafts of both letters had been prepared by the proposing Committees. After discussion, upon motion duly made and seconded, the Board voted unanimously for President Burrell to send the proposed letters.

***Ad Hoc* Committee on Environmental Crimes**

Immediate Past President Thomas S. Rue reported that industry has drafted guidelines and transmitted them to the government representatives.

It is hoped that in the near future a meeting of industry and government representatives will be held, which will be an organizational meeting for a larger, public meeting on the proposed guidelines.

**Title 46 Codification**

Dennis L. Bryant reported that clean-up bills are before Congress to (a) “tweak” the Jones Act to take into account an early Supreme Court decision, Panama R.R. Co. v. Johnson, 264 U.S. 375, 1924 A.M.C. 551 (1924), and (b) to codify bills that were passed by Congress in the six-month period between adoption and enactment of the codification bill. In addition, the codifiers did not adopt MLA suggestions relating to wrecking in Florida, and this is causing problems in the salvage community in Florida. Currently the statute requires salvors to obtain a license from the United States District Court in Florida, and this law needs to be repealed.

**By-Law Amendments**

Secretary Bartlett reported that proposed amendments to the By-Laws had been distributed to the Board Members. In light of the By-Law changes approved by the Board at this meeting with regard to Law Student membership, final, proposed amendments to the By-Laws will be distributed to the Board prior to the August Board meeting.

**Certification Proposals**

President Burrell reported that proposals have been made in New York and California for the certification of admiralty specialties. The MLA has a record of proposing certification of admiralty practitioners. The MLA will monitor the progress of these efforts in New York and California.

**Comité Maritime International**

Immediate Past President Rue and First Vice President Marwedel will attend the CMI Assembly and Symposium to be held in Dubrovnik, Croatia, May 11–12, 2007, as President Burrell at that time will be traveling to Nairobi to attend the IMO Diplomatic Conference on the Draft Wreck Removal Convention. President Burrell will attend a meeting of the CMI Working Group on Places of Refuge in London, May 22, 2007.

The CMI has sent out a Questionnaire on National Maritime Law Associations. President Burrell will draft a response and circulate it to the Board.

**Continuing Legal Education**

First Vice-President Marwedel reported that the MLA has reached an agreement with the Tulane School of Law under which Tulane, which already puts on the Tulane Admiralty Law Institute and therefore is experienced in obtaining CLE credit for that program, will help coordinate the CLE programs for the MLA. This arrangement will be implemented at the 2007 Fall Meeting in Fort Myers, Florida.

**Transportation Lawyers Association**

Members of the Transportation Lawyers Association will be speakers for the intermodal portion of the seminars at the 2007 Fall Meeting in Florida.

**Presidential Activities**

President Burrell will attend the Average Adjusters Annual General Meeting and Dinner in London on May 10, 2007; the IMO Diplomatic Conference on the Draft Wreck Convention in Nairobi on May 14–18, 2007; a meeting of the CMI Working Group on Places of Refuge in London on May 22, 2007; and the Canadian Maritime Law Association Meeting in June 2007.

**Future Officer and Board Meetings:**

A. MLA Board Meeting, Portland, Maine—August 3–4, 2007.

B. MLA Fall Meeting, Sanibel Harbour Resort & Spa, Fort Myers, Florida—October 24–28, 2007.

There being no further business to come before the Board of Directors, the meeting was adjourned at 12:01 p.m.

Respectfully submitted,<br>
James W. Bartlett, III,<br>
Secretary