

[15281]



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May 2, 2008

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING—MAY 2, 2008

PRESENT:

LIZABETH L. BURRELL
WARREN J. MARWEDEL
PATRICK J. BONNER
JAMES W. BARTLETT, III
ROBERT G. CLYNE
THOMAS S. RUE

And the following 209 members:

Robert B. Acomb, Jr.	Dennis L. Bryant
William Ryan Acomb	Richard Buckingham
Stephen A. Agus	Dean T. Buckius
Todd M. Baiad	Phillip A. Buhler
Francis J. Barry, Jr.	Robert W. Burger
Joe E. Basenberg	Frederick F. Burgess, Jr.
William E. Bell	Paul E. Calvesbert
F. Nash Bilisoly	Christopher E. Carey
Richard Binzley	Daniel Carr
G.W. Birkhead	James L. Chapman, IV
Jorge F. Blasini	Conte Cicala
Forrest Booth	Mark Coberly
Allan G. Bowdery	William J. Coffey
Lawrence J. Bowles	Michael Marks Cohen
Richard Brenca	William R. Connor, III
Lawrence B. Brennan	H. Clayton Cook, Jr.
James L. Brockmeyer	Dennis F. Cooney
Patrick M. Brogan	James Patrick Cooney
Julia R. Brouhard	John W. Crowley
Charles D. Brown	Blane Crutchfield

[15282]

Bruce P. Dalcher
Edward Dangler
Philip N. Davey
Christopher O. Davis
A. Robert Degen
Frank P. DeGiulio
Charles G. DeLeo
Vincent M. DeOrchis
Christopher H. Dillon
William R. Dorsey, III
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Paul S. Edelman
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Robert B. Fisher, Jr.
Daniel S. Foley
Vincent J. Foley
Joshua S. Force
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Lars Forsberg
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Ryan Daniel Gilsean
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John B. Gooch, Jr.
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Donald C. Greenman
Jason R. Harris
Kevin J. Hartmann
Walter C. Hartridge
Raymond P. Hayden
George W. Healy, III
Keith W. Heard

William Hewig, III
Julius H. Hines
Seth S. Holbrook
Chester D. Hooper
Robert B. Hopkins
Grady S. Hurley
Bradley A. Jackson
Ronald A. Johnson
Stephen B. Johnson
John Paul Jones
Danielle Sullivan Kaminski
Eric J. Kaufman-Cohen
John P. Kavanagh, Jr.
Kimbley A. Kearney
Allan R. Kelley
Terence G. Kenneally
Donald J. Kennedy
John D. Kimball
Bruce A. King
Peter Martin Klein
Sandra L. Knapp
Victor I. Koock
John C. Koster
Alfred J. Kuffler
Jan M. Kuylenstierna
LeRoy Lambert
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J. Dwight LeBlanc, Jr.
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Richard M. Leslie
John T. Lillis, Jr.
Gregory F. Linsin
Carl E. Lundin
Harmony I. Loube
D. Elena Makin
Jedd S. Malish
James M. Maloney
Marc G. Marling
David W. Martowski

[15283]

Janet W. Marshall	J. Ramón Rivera-Morales
Raymond L. Massey	William J. Riviere
Patrick O. McAleer	C. Kent Roberts
Charles J. McCarthy	Edwin D. Robb, Jr.
Michael McCauley	Manolo Rodriguez-Bird
Howard M. McCormack	George Rountree, III
Marion E. McDaniel, Jr.	Thomas A. Russell
Daniel G. McDermott	James E. Ryan
Kevin L. McGee	John M. Ryan
Michael J. McHale	Michael J. Ryan
Peter A. McLauchlan	John C. Scalia
Colin McRae	J. Scott Scherban
John C. Mercer	Gordon D. Schreck
Charles D. Michel	David J. Sharpe
Dennis Minichello	James T. Shirley, Jr.
Jeffrey S. Moller	David F. Sipple
Michael T. Moore	Jonathan W. Skipp
Klaus C.J. Mordhorst	Peter Skoufalos
James F. Moseley, Sr.	Kevin Beauchamp Smith
James F. Moseley, Jr.	Jonathan S. Spencer
Thomas J. Muzyka	Norman M. Stockman
Katherine F. Newman	Michasel F. Sturley
David A. Nourse	Norman Sullivan
George W. Nowell	Michael L. Swain
Kevin G. O'Donovan	William Terrill
Michael D. O'Keefe	G. Robert Toney
Michelle Otero Valdes	Alan van Praag
Richard H. Ottinger	John P. Vayda
Armand M. Paré, Jr.	David N. Ventker
Norman A. Peloquin	Kenneth H. Volk
Nathaniel G.W. Pieper	Arthur J. Volkle, Jr.
Edward J. Powers	David R. Walker
Katharina K. Powers	Harold K. Watson
Kelly M. Preteroti	William H. Welte
Anthony J. Pruzinsky	Thomas J. Whalen
Miguel Quiñones	James F. Whitehead, III
Daniel W. Raab	James C. Winton
Robert L. Reeb	Frank L. Wiswall
Mary E. Reeves	John M. Woods
Stephen V. Rible	Daniel Wooster
Winston Edw. Rice	A. Christopher Young

[15284]

Robert J. Zapf
Pam Zarlingo
JoAnne Zawitoski
Richard M. Ziccardi
Todd A. Zilbert

And the following 18 guests:

Thomas Berkley
Michael J. Bird
Peter Clason
Shawn Faguy
Kiedil Fonsen

Wim Fransen
Kenneth Gelb
Benoit Goemans
Angelike Kapatos
Lerato Maboea
Jabir J. Makin
Clete Purcell
Jean-Serge Rohart
Don Soudar
Kenneth Sproule
Saul Van Der Like
Pieter van Gog
Shari Watson

TABLE OF CONTENTS

	Page
Reports of Officers	
Report of Secretary	15287
Report of Treasurer	15289
Report of Membership Secretary	15289
Reports of Standing and Special Committees	
Arbitration and ADR	15302
Carriage of Goods	15303
Fisheries	15305
Inland Waters and Ocean Towing	15307
International Organizations, Conventions, and Standards	15308
Marine Ecology and Criminal Law	15310
Marine Financing	15312
Marine Insurance and General Average	15314
Marine Torts and Casualties	15315
Offshore Industries	15316
Planning and Arrangements for the Fall 2008 Meeting	15317
Practice and Procedure	15318
Recreational Boating	15321
Regulation of Vessel Operations	15323
Salvage	15324
Stevedores, Marine Terminals, and Vessel Services	15325
Young Lawyers	15327
Continuing Legal Education	15328
Uniformity of U.S. Maritime Law	15329
Website and Technology	15330
Ad Hoc Committee on America's Marine Highway	15332
Ad Hoc Committee on Environmental Crimes	15333
Nominating Committee	15334
Adjournment	
Formal Reports of Standing Committees	
Marine Insurance and General Average	15340
Marine Torts and Casualties	15342

[15286]

	Page
Practice and Procedure	15353
Stevedores, Marine Terminals, and Vessel Services	15363
 Minutes of the Meetings of the Board of Directors	
March 8, 2008	15367
May 1, 2008	15374

[15287]

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING
NEW YORK, NEW YORK
MAY 2, 2008

PROCEEDINGS

MS. BURRELL: I would like to call this meeting to order and welcome you all. If you come up and speak during the meeting, please give your card to the reporter so that your name can be accurately reflected and so that we can get the transcript to you for correction. With that said, I'm going to move first to our Officers' reports, and, as is customary, I will start with our Secretary, Jim Bartlett.

MR. BARTLETT: Thank you, Madam President.

Before I start my report, as Ms. Burrell said, please bring your card to the court reporter before you begin to speak. Please also be sure to sign in at the table outside the Great Hall.

Finally, if you have your cell phones with you—and I suspect almost everyone does—you must either turn them off or put them in the courtesy mode, so we are not interrupted during the meeting.

The Board of Directors met twice since the last General Meeting. We met first in March at Amelia Island, Florida, and then here at the Association of the Bar yesterday morning. I will briefly report on some of the things the Officers and Board have done since our last General Meeting, but I believe most of the subjects that we addressed at our two meetings to be addressed by individual reports of the Committees.

At our March meeting, and followed up by our meeting yesterday, President Burrell announced that, in response to a letter received from Admiral Baumgartner, a Special Committee has been created to liaise and work in a close relationship with the Coast Guard. Admiral Baumgartner will address this subject more later in this meeting.

Briefly—and you will again hear about this later in this meeting—our fall meeting this year will be in Long Beach November 5th through the 8th, 2008.

[15288]

Earlier this year the MLA received a subpoena and Rule 45 request in connection with the Katrina Canal Breaches Consolidated Litigation in the United States District Court for the Eastern District of Louisiana. With Board approval, Directors Grady Hurley and Janet Marshall filed a motion for a protective order. Ultimately, in March that motion was granted, with the U.S. Magistrate Judge issuing an opinion that should prove helpful if similar discovery is sought from the MLA in the future.

The Board received a report from Robert J. Zapf of Los Angeles, who at Ms. Burrell's request participated as an observer in telephone meetings and conferences of the Committee to Implement the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit. Mr. Zapf reported:

The Convention is of interest to maritime practitioners in that it could apply to independent guarantees or stand-by letters of credit negotiated and adopted in connection with the release of ships or other properties seized in accordance with Supplemental Rules for certain Admiralty and Maritime Rules of the Federal Rules of Civil Procedure.

It is not felt that this convention, even if adopted, will cause much change in American law. Mr. Zapf will continue to act as an observer and participate in the Committee's meetings and report on developments.

The MLA filed amicus briefs recently in support of petitions for certiorari to the Supreme Court in two cases. The first is *National Casualty Company v. Lockheed Martin Corporation*. Unfortunately, especially since I represent National Casualty in that case, certiorari was denied. I see Professor Sturley smiling a bit, because he was on the other side. The other was *Magnolia Industrial Fabricators v. Devon and Louisiana Corp.*, and that petition is still pending.

President Burrell, I am pleased to announce, has been asked to speak for the legal profession at the Average Adjusters dinner next week in London. She is only the second U.S. lawyer to be so invited, and I think that is a great honor to President Burrell and this Association.

Finally, as this is my last report as Secretary, I want to thank the Officers and Directors with whom I have served, as well as the membership. It has been my pleasure and privilege to serve as your Secretary.

That concludes my report, and I move its adoption.

[15289]

MS. BURRELL: Second? In favor? Opposed? Wonderful.

Thank you very much, Jim. You have served so admirably as the Secretary. I know just what that job entails, and you've done a bang-up job. Thank you very, very much. With that, I will now call on our Treasurer, Bob Clyne, to give his report.

MR. CLYNE: Thank you, Madam President. The financial condition of the Association remains strong, and this is due in no small measure to our ability to resist Phil Berns' strident demands that we invest heavily in the sub-prime mortgage market.

At the end of the third quarter of our fiscal year we had slightly over \$300,000 in cash and investments. This number is a bit inflated, because we still had some bills to pay at that point in time for the Sanibel meeting. Speaking of the Sanibel meeting, although we had a turnout that was less than we had hoped for, it was a financial success for the Association. And I attribute and credit the Arrangements Committee for the great job that they did at that meeting.

With respect to dues, we are pleased to have sent out the dues at the same level of \$135 that we have been able to maintain for the last five years. The Association's membership has been very good about promptly paying those dues. And we really do appreciate that because, for all practical purposes, it is our only source of income for the Association. So thank you very much for that. If you have not paid your dues, please do so as soon as you possibly can. That completes my report, and I move for its adoption.

MS. BURRELL: Second? In favor? Opposed? Well done, Bob. Approved.

You will see that we have an empty seat here. Its vacancy is so obvious, because it would ordinarily be filled—indeed, more than filled—by our Membership Secretary, Phil Berns. In order to give you the benefit of Phil's particular brand of report, we have arranged for him to address us on the speakerphone, because there is just nobody else who can replace Phil.

MR. BARTLETT: Phil, this is Jim. You are on.

MR. BERNS: I hadn't even finished makeup.

Anyway, I want to thank you for allowing me to make my report. This is a courtesy of modern communications and obviously the efforts of Jim

[15290]

Bartlett, my local urologist, and my local cardiologist, both of whom, by the way, I found at a sports bar at Caesars Palace. They offered the best odds. You can also enter them as a quinella in the Derby. We are all set. In any event, my report follows the standard format.

On February 10, 2008, we had a total of 3,027 members. I will give you the new numbers shortly. And for the members at the General Meeting, the Board met yesterday, and at that time eight Associates were elevated to Proctor status. I'll quickly so name them: Ryan Acomb, Julius Hines, Neil Klein, Jessica McClellan, Dabney Welsh Pettus, Sterling J. Stires, Michelle Otero Valdes, and Tom Wynne.

We also had 25 applications for Associate membership, and they were approved. I will not name them. Anyone wanting to check, either contact me by e-mail or contact the new Membership Secretary, or if Jim is standing around here afterwards, he has my report, and he can also tell you who was selected.

Jumping ahead, if I can find the page, we have one reinstatement application, and that is Dave Hornig, and he was reinstated as a Proctor.

Non-Lawyer applications, we have five applicants who were nominated and selected. They are Kevin Ennis, John L. Judice, Charles A. Mannino, Lorna V. Rosquites, and Michael Wilson.

There were no Judicial member applications submitted. One application was submitted and approved for Academic member, and that's Professor R. Randall Bridwell of Charleston School of Law.

Law Student applications, as you well know, we have commenced a new status of membership for Law Students, with special categories. We received eleven applications. By the way, this is the second group of members. The first five were elected at the Board meeting earlier in the springtime. Eleven applications were submitted and were approved by the Board.

I have a continuing note, re: membership and Proctor applications. And I am sure that the new Membership Secretary will be carrying on, but I hope not like I do. It is again requested that all applications and supporting documents be submitted via e-mail. That is both the present and the future of the Association.

At this time, Madam President, I will also ask that after I read the names that we have a moment of silence. Since the October 2007 meeting in Sanibel we

[15291]

have received notice and regret to report the death of the following members: John R. Martzell; Hon. Paul H. Roney; Charles L. Trowbridge; Robert J. Blumberg; George G. D'Amato; William R. P. Hogan; Richard B. Kydd. Madam President?

MS. BURRELL: I would like a moment of silence for our departed members, please. Thank you all very much.

MR. BERNES: At this time we also continue to make a concerted effort to obtain e-mail addresses from all members who have not submitted them. As you know, most of our notices, reports, et cetera, are now being sent out via e-mail, and it is most important that we have your e-mail address, that it be updated. And, of course, this summer the biannual published directory is coming out. Please immediately check your listings on the website to make sure they are accurate, and get back to Robin—her e-mail address is listed—and get back to the new Membership Secretary. Or if there is some way I can help either or both of them, get back to me and I'll pass it on.

As you know, we had sent out all the notices for this meeting. And for the first time notices were also sent to new Life members. Annual mailings to all Life members will be initiated next year. The form has been submitted and approved.

There is no report of the Special Subcommittee on Membership. But I have recommended, due to some questions that arose during the picking of Associate members for Proctor status and for Non-Lawyers to become members, that a review be made of the categories and what is required for each group to qualify either as a Proctor or as a Non-Lawyer member.

As a result of the election by the Board on Thursday of the several categories of members, our numbers total 3,060, which I'm pleased to say exceeds the opening for the year of 3,027. I have told the Officers over the last few years that I think 3,000 is the figure of stability for the Association.

I'm also going to make a final plea, and that is that every Board member, every member, look for members to be assets as Associates and Non-Lawyer members in the MLA. I feel that the MLA is one of the best associations around. It is not only a professional organization, but it is an organization that fosters a credibility and friendship among members that is rarely found in other groups. So that I do encourage you to continue to do it.

This is my last report as Membership Secretary. I want to thank the Officers, the Board, and the membership for the support they have given me over

[15292]

the last six years, particularly in bringing in new members and encouraging new approaches and achieving that.

I also wish luck to the new Board, the new Officers, and again to the members of the Association. I want to thank you for having elected me over these last several years and putting up with an otherwise pleasant personality.

I hereby move for the adoption of this report, not necessarily the last part.

MS. BURRELL: Second? In favor? Opposed? Oh, Phil, you always sweep by.

We all know Phil is an extraordinary person, but he has been indeed an extraordinary Membership Secretary and has exerted himself mightily to swell the ranks of our organization. Thank you so much, Phil. Your efforts are much appreciated. Having concluded the Officers' reports, I would now like to recognize some of the honored guests that we have had with us this week.

MR. BERNES: Before you do that, Madam President, with the approval of the MLA and the AMA, can I sign off?

MS. BURRELL: You may indeed. Thank you very much, Phil.

This week the CMI Executive Council has been meeting in New York, and they were kind enough to join us at our Board luncheon yesterday. I'm going to announce their names, and then I'm going to ask their President to come up and say a couple of words.

The members of the CMI Executive Council are Jean-Serge Rohart, the President of the CMI; Patrick Griggs, who is the Past-President of the CMI; Karl-Johan Gombrii, Vice-President; Stuart Hetherington, Vice-President; Wim Franssen, Administrator; Nigel Frawley, Secretary General; Benoit Goemans, Treasurer; Frank Wiswall, Vice-President honoris causa, CMI; José Maria Alcántara; Chris Davis; Justice Johanne Gauthier; Jose Tomas Guzman Salcedo; Mans Jacobsson; and Gregory Timagenis.

Thank you all very much for not only coming to this fair city but also joining us at our Board luncheon. Our Association, of course, was formed to serve as a constituent member of the CMI, so we are very glad to have that relationship even further acknowledged and confirmed by your recent visit. Thank you very much.

Jean-Serge, would you like to come up and say a couple of words?

[15293]

MR. ROHART: Madam President, members of the Association, on behalf of the CMI I would like firstly to express our gratitude for having been received by the Executive Council in New York for the meeting of the Executive Council yesterday and the day before. It was the second time. The last meeting we had on the occasion of your Centennial 10 years ago. And both times were a great event for us and a great occasion to meet with our friends of this Association.

On top of that, I would like to take profit of my presence in this Association today to remind you that in five months from here, namely, the week of the 12th to the 18th of October—that is just a few weeks before your meeting in Long Beach—and just to prepare your skin for the sun rays of Long Beach, you will be invited to attend our 39th Meeting of the International Conference of the CMI.

We shall meet in the vicinity of Athens. Some of you may know the place called Vouliagmeni, and more particularly the luxurious place and hotels located on the site of Astir Palace on the seaside. And the venue of this beautiful place will probably not replace Long Beach but will be a good preparation.

We shall take profit of the sun to take some rest, to meet many friends, but on top of that, to have the honor and pleasure to address three major topics; namely, the UNCITRAL instrument. I must encourage you to come and support your two Delegates who will present speeches on that topic, Madam President and Professor Sturley, whom I recognize. That will be one of the three major topics.

The two other being the Places of Refuge and the Procedural Rules applied in the frame of Limitation of Liability Conventions.

There will be some other topics in the last two days of the conference. You will find the details of this program in the brochure that maybe you have already received in its hard copy. And, if not, I encourage you to go on the site of the conference, which is www.cmi2008athens.gr, or more simply on the home site of the CMI, where all the details are also published. I hope that your Association will be, as usual, very well represented in terms of the number and quality of speakers and delegates.

If this can make a further incentive for you to take an earlier vacation, I have the pleasure to inform you that exceptionally at the occasion of this meeting I have obtained from the organizers an extension of the early bird registration fee, which was expiring yesterday or the day before yesterday, but which will be extended until the end of next week. So may I encourage you to apply, very many of you?

[15294]

Thank you, Madam President, for welcoming us.

MS. BURRELL: Thank you very much, Jean-Serge. Before Jean-Serge sits down, if there are any members of the CMI Executive Council here this morning, will you all just stand up so we can see your faces?

Come, come. I know there are others here. Thank you all very much. It's really been a pleasure having you.

And while we are talking about organizations from outside the United States, I would like to recognize that we have had the pleasure of the company of Michael Bird, who is the President of the Canadian Maritime Law Association. Michael, are you here? Please stand up and say hi.

MR. BIRD: Hello. Thank you.

MS. BURRELL: Thank you very much, Mike. Did you want to say a couple of words about your meeting?

MR. BIRD: Ladies and gentlemen, I would like to announce that we will be having a seminar in Vancouver on June 9th on the occasion of our Annual General Meeting. We are most fortunate in having your incoming President, Mr. Marwedel, attending the meeting and speaking at the seminar. The details of the seminar are on the website, which is cmla.org. If any of you would like further details from myself, I welcome you to contact me following the meeting.

We are very delighted to have an excellent relationship with the U.S. MLA. In particular, we have worked closely over the years with your President, Liz Burrell, and other members of the Board of Directors. Again, I'm most honored to be asked to attend your Annual General Meeting and dinner, and I thank you so much. Thank you.

MS. BURRELL: Thank you very much, Mike.

We do indeed enjoy a wonderful relationship with your organization.

We will also have with us this evening the President of the Venezuelan Maritime Law Association, Francisco Antonio Villarroel Rodriguez.

We also have Klaus Mordhorst, President of the Society of Maritime Arbitrators, joining us. Klaus, please stand up and say hello.

[15295]

I would also like to say that while I have looked primarily outside of our shores in making the first announcements of our honored guests, we have been honored, as has now become a wonderful tradition, with the presence of several of our colleagues who work on the government side, particularly in the U.S. Coast Guard. We had with us at our Board luncheon yesterday our good friends Admiral Baumgartner, Admiral Crowley, and Captain Chuck Michel. While the Captain of Port, Robert O'Brien, couldn't attend, he did send his adjutant.

I now call on Admiral Baumgartner to tell us a bit about what is going on.

The participation of Bill and Chuck has made an enormous contribution to our Committee meetings. I thank you both very much.

ADMIRAL BAUMGARTNER: I thank you.

It's always a great pleasure for me to be at the MLA meetings. It's one of the first things that goes on my calendar. I can't always attend every part of every meeting, but I really, really enjoy it, especially the camaraderie.

Something that I value even more is the honest feedback I get from you. And that will be one of the first things that I talk about here, is the wonderful relationship. In the different Committee meetings and between them, I've received a lot of good feedback about what you think about the Coast Guard, what we are doing, your opinions on where we are going, and so forth.

In talking with Liz Burrell this winter, I thought we needed to expand that a bit. I wanted to do a couple of things. I wanted to formalize the feedback process and then open it up.

And why formalize? One, I want to make sure that my successor gets a good running start with the Maritime Law Association. Two, I wanted, more importantly, to make sure that the opportunity to get candid feedback back to me and Chuck and others was open to all members of the MLA, not just those who feel comfortable coming up to us at a break and saying, hey, I've got an issue or, hey, I would like to talk to you about that. I sent Liz a letter to kind of formalize this and put ourselves on the hook to make sure that we did it.

One of the two things that I wanted to do was to have larger forums where we could take questions, address topics, and so forth. Coincidentally, two of our Committees that we deal with a lot, Jim Moseley's and Tony Whitman's Committees, came up with the idea of having a joint meeting in Wash-

[15296]

ington with government agencies. That worked out wonderfully on Tuesday, and I think it was a good forum for that kind of give and take.

The other thing that I very much wanted to do was to establish a mechanism for members with sensitive issues that they or their clients might not want to be identified with. Liz has set up a special Committee to do precisely that. We're looking forward to hearing from that Committee about particular issues of interest, complaints. Maybe there will be some compliments. But I suspect they'll be more in the neighborhood of complaints.

We actually do more with complaints than with compliments, I guess. Particularly if they are frank and they can be funneled from that Committee. If it's an issue that you don't necessarily want to be identified with, that's fine.

We won't be able to address particular matters, because we have appeal processes. But we're generally and genuinely looking for systemic issues, complaints: are you being treated properly, are you finding disparate things in different ports where you're wondering why things aren't consistent? Hopefully this will be a good mechanism for us to get information and feed answers back to all of you.

Frankly, in addition to receiving information, it's very helpful for us to have good dialogue with you, because we can often in a short conversation explain something that must be completely perplexing as you are trying to figure out what is it that is appearing in the CFR or in the newspapers.

Denny Bryant often explains these issues well in his newsletter, but we don't always tell him everything either. And it's usually not because of a lack of desire to get that information out. You might find it difficult to believe, but we are actually pretty busy in Washington, and I do find myself occasionally running from issue to issue as I walk down the hall. So I really have a lot of enthusiasm for this particular idea and hope that it works.

In general, things with the Coast Guard: I'm not going to take too much time, because many of you heard me either on Tuesday or Wednesday. But for those of you that didn't, I can tell you I work for somebody that is extraordinarily open and transparent: Admiral Thad Allen. And I'm not a sycophant, and I generally don't talk a lot about my bosses.

But it's interesting working for Thad Allen, because he doesn't hide anything. If he has done something wrong, done something dumb, which doesn't happen all that often, he is very open about it and he wants our

[15297]

organization to be completely open about everything. If we do something wrong, he wants to be the first person to tell Congress, he wants to be the first person to tell the press what we did wrong and what we're going to do about it. So that's a very interesting place for a lawyer to be. It's actually pretty fun, as well.

One of the things that we're very concerned about is how we are doing with the maritime industry. And we have dedicated a lot of time in the last 12 months to figuring out what industry thinks of us. What are we doing right, and what are we doing wrong.

When this issue was raised Admiral Allen asked Vice Admiral Jim Card, who is a Retired Vice Commandant of the Coast Guard, to go out and interview some 300 people in industry and at lower levels of the Coast Guard and say: How are we doing in this job? Where are the problems? What things are we just not getting? He gave us a pretty unvarnished report which is actually available on the Web.

We have a Marine Safety Program Improvement Plan out on the Web at our websites right now. We're trying to get the right resources in there so that we can fix the problems that we might have, increase service to your clients and increase responsiveness.

The Commandant also sent out something called an All Coast Guard Message—"All Coast" is what we call it—outlining his expectations for how everybody in the Coast Guard should deal with the marine industry; how we honor mariners; how everybody in the Coast Guard understands that maritime commerce is the lifeblood of our economy, and that we need to understand it and make sure that it's safe, secure, and protective of our environment. But we also need to make sure that it runs and that we don't put any strings on that economic engine.

One of the particular things that I love about that message is if somebody issues a decision, maybe an inspection report on a vessel or something else that delays the operations of that vessel, they must get to their supervisor as soon as possible so there's a second set of eyes on that before this action disrupts commerce.

Hopefully we'll get the capacity to make a lot of these changes, as well. That's one of the problems that we have, is we're extremely overstretched. Everybody knows that our mission set expanded greatly after 9/11. We have expanded our size a bit after 9/11, but even after that expansion we're only

[15298]

back to about the same size we were in 1990, which is also about the same size we were in 1960. You can imagine that our mission set now is a bit different than it was in 1960. We're working hard to make sure that we can increase capacity, and that we have people that are fully competent, qualified, and properly supervised, to execute those missions.

I really do appreciate your time today. This is a great opportunity. I'm looking forward to a lot more engagement with all of you. So, tonight I'll be at the dinner. If you haven't ever met or talked to me before, please feel free to come up. If you have any kind of issue, I want to hear it. Or if you don't have any issue, I would just like to meet everybody anyway. And I will commit Chuck Michel to that same standard. He's not an introvert. He's an extrovert, so he will be happy to do all that, as well. That's why we are here.

Thank you so much.

MS. BURRELL: I know I can vouch for the sincerity of everything that was said, and that there is a real desire at this point to ensure that the Coast Guard is fulfilling its missions in the best possible way. It is a tremendous honor for us that the Coast Guard is looking to this Association for input as to how to improve their performance.

Thank you very much.

Speaking of the Coast Guard, I would like Admiral Crowley to come up. I am calling John up to acknowledge the fact that he is retiring from the Coast Guard.

He has been a tremendous force in creating the situation that allows the new forum to exist, and we would like to acknowledge his contributions by presenting him with a Certificate of Appreciation. This certificate says:

"The Maritime Law Association of the United States presents this Certificate of Appreciation to Rear Admiral John E. Crowley, Jr., Commander, Ninth Coast Guard District.

"The Maritime Law Association of the United States acknowledges with grateful appreciation your decades of principled and effective service to your country, the Coast Guard, and the maritime community. Your integrity and commitment to the law helped forge the good working relationship between the Judge Advocate General's office and the legal community. Thank you also

[15299]

for your participation in the activities of the Maritime Law Association. Your advice and counsel have greatly enhanced the Association's work."

Thank you so much, John.

We have some people within the Association who also deserve Certificates of Appreciation, and those are our outgoing Board members and Committee Chairs.

The retiring members of the Board of Directors are Dennis Bryant, Allan Kelley, Stephen Rible, and John Ryan.

The Board really is such an effective institution, and these are people who have contributed enormously of their talents to its work. Thank you all very much for your fine service.

We also have some Committee Chairs who are stepping down: Chris Davis, International Organizations, Conventions and Standards; Jay Paré, Arbitration and ADR; Jim Moseley, Jr., Marine Ecology and Maritime Criminal Law; Bruce King, Marine Financing; Andy Goldstein, Practice and Procedure; and Beau Gelpi for Inland Waters and Towing. Thank you all very much.

The Committees are indeed the lifeblood of this Association, and your Committee Chairs labor mightily to keep all that great work going. Please give them a hand while I hand them their certificates.

I understand that the Coast Guard would like to do some of its own honoring. So I call upon Admiral Baumgartner or Captain Michel.

ADMIRAL BAUMGARTNER: Both. We're a tag team.

I promise, if you invite us to a meeting we won't take over. Tom Rue, could you come up here for a second?

MR. RUE: Whatever it is, I'm innocent. I can explain.

ADMIRAL BAUMGARTNER: Spoken like a good counsel.

Well, I would like to present the Meritorious Public Service Award to Tom. And I'll read you shortly the citation. I won't read the whole thing because, see how large they are? And we usually print it in eight-point font, being the government.

[15300]

What I'll read here is:

“The Commandant of the United States Coast Guard takes great pleasure in presenting the Coast Guard Meritorious Public Service Award to Mr. Thomas S. Rue in recognition of his outstanding contributions as the President of The Maritime Law Association from 2004 to 2006. Mr. Rue was a key adviser to the United States delegation to the International Maritime Organization's Legal Committee; in particular, his work on the United States Delegation to the Diplomatic Conference on the Revision of the Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation. This instrument will significantly enhance the international community's fight against terrorism, proliferation of nuclear weapons, hijacking and other unlawful acts at sea.

“In his role as President, Mr. Rue spearheaded efforts aimed at bridging differences between Federal prosecutors, law enforcement elements, and the shipping industry concerning the criminal enforcement of environmental laws. Aggressively tackling arguably one of the most contentious and challenging legal issues in the current maritime practice, his innovative suggestions for enhancing understanding and communications, as well as his earnest and unwavering commitment to develop and implement cooperative and effective solutions, exemplified the fulfillment of the key objectives of the MLA.

“Mr. Rue's exceptional professionalism, sense of public service was highly committed and in keeping with the highest traditions of the United States Coast Guard.”

What goes along with this is a medal.

MR. RUE: Don't give me a medal.

ADMIRAL BAUMGARTNER: And it does also come along with a lapel pin in case the full medal doesn't match the right occasion. I would also like to present one of my coins so if you happen to be incognito, at least you have some memento of our appreciation. And I pass that on to you. Thank you very much for all that you have done for the MLA and all that you have done for the Coast Guard, the maritime industry, and the country.

MR. RUE: Thank you. I'm honored.

ADMIRAL BAUMGARTNER: And Liz. We're actually making sure that we're up-to-date.

[15301]

“The Commandant of the United States Coast Guard takes great pleasure in presenting the Coast Guard Meritorious Public Service Award to Ms. Lizabeth Burrell in recognition of her contributions as President of The Maritime Law Association.

“In her role, Ms. Burrell has greatly strengthened the bonds between the Coast Guard and the maritime legal and regulative communities. Her efforts have had a tremendous and positive impact on enhancing public participation in governmental processes, provided a forum for discussion and consideration of problems affecting the maritime law and its administration.

“She also ably participated as adviser to the U.S. Delegation to the IMO Legal Committee. In this role her sage advice and knowledge of maritime international law were critical in addressing emerging issues of concern to the global community of nations. These included the rights of seafarers in the event of maritime accidents and the final resolution of the exceptionally complex issues surrounding the limitation of liability and compulsory insurance for carriers for acts of terrorism contained in the guidelines for the implementation of the Athens Convention relating to the carriage of passengers and their luggage by sea.”

That’s actually much more complicated than it sounded in that sentence.

“She also served on the United States Delegation for the Diplomatic Conference on the Removal of Wrecks that was held in Nairobi, Kenya last May.

“Her exceptional professionalism and sense of public service was highly committed and are in keeping with the highest traditions of the United States Coast Guard.”

And I think that this is specifically designed to spruce up any sling or cast.

MS. BURRELL: I need that. Thank you.

ADMIRAL BAUMGARTNER: It should work. There we go. And it works out well.

MS. BURRELL: Thank you so much.

ADMIRAL BAUMGARTNER: And when it doesn’t, I would like to give you one of the coins, as well.

[15302]

MS. BURRELL: Thank you so much. This is a huge honor. I'm very grateful. Thank you so much, both of you. Thank you.

ADMIRAL BAUMGARTNER: Thank you so much.

MS. BURRELL: This is going to sparkle right here in front of me and inspire me. So thank you very, very much.

With that unexpected honor, I will now move to the Committee reports, unless we have other surprises.

I now call on Jay Paré, for Arbitration and ADR.

MR. PARÉ: Madam President, on Wednesday I attended the meeting of Committee Chairs and there was a lot of bragging going on about how many people were in attendance at various meetings, and I just wanted to point out that they very cleverly figured out how to have joint meetings, and they also had them free of charge.

I'm pleased to report that the Arbitration and ADR meeting had 51 people in attendance on Thursday afternoon. And we had an excellent program entitled "Keys to Mediation Advocacy." We had some of the leading practitioner-advocates, as well as mediators and clients involved in the mediation process. I want to thank our participants on the panel for that, and that included Pat Martin of New York, Rob Ryniker of Houston, David Martowski of New York, Sandra Gluck of New York, and our moderator Robert Glenn.

I also want to thank Bruce Paulsen and Seward & Kissel for allowing us to inaugurate their new CLE room. It was an excellent facility.

The Committee has a newsletter on Arbitration and ADR that is out front and it will also be in the MLA Report. That concludes my report.

MS. BURRELL: Thank you very much, Jay. Again, thank you for your service on that Committee. Don Greenman for Carriage of Goods, who will be followed by Keith Heard.

MR. GREENMAN: Thank you Madam President, distinguished guests, members.

Our Committee met on April 30th with a good attendance. I really haven't counted the numbers, so I can't tell you, but we had people in person

and by telephone, which is one of the growing ways of attending Committee meetings.

The UNCITRAL Draft Convention on the Carriage of Goods Wholly or Partly by Sea was the hottest topic in the cargo law area at the time of the meeting. However, we still live with COGSA. We had a good discussion presented by Ed Radzik, who is our Cargo Law Subcommittee Chairman, and Tony Pruzinsky, who was counsel in the case of *Fisher v. M/V D.G. HARMONY*, the citation of which is a plug for AMC, which is 2008 AMC 609 (2d Cir. 2008). Tony was one of the counsel. Without going into all of the details of the facts, it's the first case in the issue of AMC that is being handed out here. And if you have ever noticed, on the cover of the AMC paperbacks there are little squibs. And I want to describe the case just by reading the squib for it. "The Second Circuit rules on an explosive issue: cal-hypo and COGSA." The Second Circuit's decision came down last month. There were three parties on the appeal, and all three have requested rehearing. That may be an indication that the Court got it right.

With respect to the UNCITRAL Convention, the Working Group III completed its work on the Draft in January. The report of the Session, including the Draft, can be found on the website for the MLA under "documents." If you've managed to get the report, the Convention itself begins on page 60, so don't think that it's missing if you start off and wonder where it is.

At our meeting Chet Hooper, Vince DeOrchis, and George Chandler (by telephone) discussed the history of how we reached the point where we are with respect to the UNCITRAL Convention, starting with our Committee and the MLA Draft Revision of COGSA through the Senate, through the CMI, through the UNCITRAL. Chet and Vince prepared a paper comparing the Senate version of the revision of COGSA, which was based on the MLA Draft, with the UNCITRAL Draft. That, too, is on our Committee's document section on the MLA website, if you care to look at it.

Also, at the meeting we had a panel discussion chaired by Professor Sturley. We wanted a free discussion, and we wanted to receive points of view from different aspects of the industry and the legal profession. We promised everybody who was on the panel that anything they said would not be held against them. We did have widely varying views from various people, and rather than telling you what they were, because I promised I wouldn't, I will tell you the breadth of the people we had.

James T. Nasso, Worldwide Marine Recovery Manager for AIG; Robert Hough, Britannia P&I Club and also a member of the International Group of

[15304]

P&I Clubs' Bills of Lading Committee; Daniel Carr, Assistant General Counsel for Stolt-Nielsen Transportation Group; Andy Sukomoto, Claims Department for Maersk Sea-Land; John G. O'Connor, who is with Langlois Kronstrom Desjardins. He is also a Regional Vice President of the Canadian Maritime Law Association; Don O'Hare of the World Shipping Council, who appeared by telephone; Hermann Amsz, Chairman and Chief Executive Officer of Omnitrans Transportation Group, Ltd.

The views were not all sweetness and light, but I don't believe there is a stoppage of enacting or adopting the UNCITRAL Rules, but we don't know. The next step in the process is that the working group's document will be presented to the full meeting of UNCITRAL next month.

As there is no official version of what the Convention will be, I think our Committee and the MLA in general do not yet need to take a position on whether the U.S. should adopt it or not, except to note that our members have been very much involved in its preparation and the idea.

And with that, Madam Chairman, I conclude my report.

MS. BURRELL: Thank you very much, Don.

Mr. Keith Heard will make a short presentation. He will be followed by Steve Johnson for Fisheries.

MR. HEARD: Bob Mottley is a retired shipping journalist and a good friend of the Association. Bob worked for "Town & Country" and other magazines earlier in his career, but then he found his true calling when he went to work as a reporter, writing for "Marine Engineering Log," which I think now is known as "Marine Log." And in 1994 or 1995 he switched over to "American Shipper" magazine, for which he worked until he left in about 2006.

He's now retired, living in Upstate New York, near Ithaca, close to his only child—a daughter—son-in-law, and their new baby. It sounds rather idyllic.

Bob continues to write. But before I get into that, let me say this: When he wrote for "American Shipper," Bob became very interested in the workings of the Association. He wrote articles about the Association's efforts to have COGSA revised domestically. When that shifted to the international arena, he followed the workings of the UNCITRAL group and the development of the Draft Instrument, which we can someday hopefully call something other than the Draft Instrument.

[15305]

He also pioneered a section in each issue of the magazine known as the “Shipper’s Digest,” which was a summary of interesting recent maritime cases—mostly cargo cases, but not all.

Bob writes with a lot of flair and panache, and I found his summaries to be actually more interesting than what the Courts had written.

In any event, Bob is retired, but like many retired people, continues to work. He accepts free-lance writing assignments, and was asked to write a history of the National Industrial Transportation League. He has done that, and I have been asked to present a copy of that book which Bob has inscribed to the Association. His inscription reads as follows:

“For the Maritime Law Association’s reference library. In memory of the maritime attorney who persuaded me to write about admiralty law, my late friend Byron King Callan.” Signed Bob Mottley. The title of the book is “The Voice of the Shipper and More, the NTLI at 100.”

Hopefully, someone will write a book one day about the first hundred years of the Maritime Law Association, but right now we have one about NTLI. And, Madam President, I am honored to present it to the Association.

MS. BURRELL: I thank you very much, Keith. Bob, indeed, has been a very good friend to the Association.

Steve Johnson will be followed by Beau Gelpi.

MR. JOHNSON: Thank you, Madam President.

The Fisheries Committee met on May 1st at a well-attended meeting of Garvey Schubert Barer here in New York City. We had a number of guests, in particular a couple of gentlemen from the Maritime Administration office of Chief Counsel, Mitch Hudson and Michael Pucci, both of whom are very instrumental in citizenship issues affecting the fishing industry, and we very much appreciated their attendance. Doug Cameron of the Coast Guard National Vessel Documentation Center sent his regrets, because he was on a conference call dealing with the *Shipbuilders Council* case, I believe. We had an active meeting that was well attended.

The first item on our agenda was a legislative proposal that I, in fact, have developed to facilitate the demonstration of citizenship for purposes of qualifying entities that are widely held to own vessels with fishery endorsements,

[15306]

thinking primarily of public companies and pension plans. I know this may seem unusual for most of the country, but in the North Pacific there are companies with an interest in public investment and in potentially going public. So we're looking at that as a way to facilitate that kind of development. Right now it's a difficult proposition for public companies to qualify for fishery endorsements under the citizenship standards.

We looked at a couple of pending bills: The Coast Guard Authorization Bills that are pending in the House and Senate. Both of them have elements that would implement resolutions adopted by the Maritime Law Association. The Senate Bill S.1892, at Section 505, would prohibit the attachment of maritime liens on limited access fishing permits. And this would implement, if enacted, a part of a resolution that was adopted by the Association at the New Orleans meeting in 2004.

H.R. 2830, the Coast Guard authorization bill that passed the House last week, includes at Section 301(a) a measure that would implement the second resolution that we adopted in November of 2004 to eliminate a potential trap for vessel owners and mortgagees of large vessels. The old provision of the American Fisheries Act that this provision would repeal would make a vessel permanently ineligible for a fishery endorsement if its Certificate of Documentation lapsed or became invalid and the new application was not filed within 15 days. No one can remember quite why that was adopted into law in the first place, and we're trying to get rid of it, and the House has seen fit to include that in its Coast Guard Authorization Bill.

We discussed the litigation around recent U.S. Coast Guard rulings on the U.S. build issue; in particular, the decision of Judge Brinkema of the Eastern District of Virginia in the *Shipbuilders Council* case, in which, if you aren't aware of it, Judge Brinkema overturned a ruling of the Coast Guard, overturned the issuance of a Certificate of Documentation for a coastwise vessel on the grounds that there had been too much foreign work and the Coast Guard had inadequately explained its decision to grant a coastwise endorsement to that vessel. The Judge remanded it to the Coast Guard for proceedings not inconsistent, so long as the Coast Guard did not issue a Certificate of Documentation with a Coastwise License. So that sent a chill through everyone—that should send a chill through everyone that relies on rulings of the Coast Guard or the Maritime Administration on a host of matters.

We discussed some recent cases. Lisa Reeves gave a synopsis of a couple of cases that are important to the fishing industry. We'll post them on our committee's website.

[15307]

Finally, we had a report on the status of efforts to create a permitting system for aquaculture in the exclusive economic zone. And the report on that is that there is nothing whatsoever happening on legislation to create a streamlined permit system for aquaculture in deep water. There is something developing through the Minerals Management Service, a potential rule-making that the Minerals Management Service has indicated could permit aquaculture uses of offshore oil platforms that are no longer being used for production of oil, and that's a rulemaking we intend to follow.

Thank you, Madam President.

MS. BURRELL: Thank you, Steve.

Beau Gelpi for Inland and Ocean Towing.

MR. GELPI: Madam President, the Inland Waters and Towing Committee met at the office of McAllister Towing. I would like to thank McAllister for their continued support of our Committee. They have been a big help.

Gene George of our Great Lakes Subcommittee gave a presentation on the Great Lakes issues. The main issue seems to be the states' attempts to regulate ballast water discharge to prevent the introduction of nonindigenous species.

Following that we had a presentation by Brian Fisher of the Coast Guard concerning the status of Subject Chapter (M), the regulations for the inspection formally of uninspected towing vessels.

Kent Roberts gave us a nice presentation concerning the legal ramifications of the new inspection regime that is being drafted.

Buck McAllister then updated us on some industry issues.

The meeting was well-attended by representatives from all three coasts and several inland cities. Kent and Gene did excellent papers, which I will endeavor to get up on the website. That concludes my report.

MS. BURRELL: Thank you very much, Beau. Chris Davis will now report for the Committee on International Organizations, Conventions, and Standards. IOCS will be followed by Jim Moseley, Jr.

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

[15308]

The International Organizations, Conventions and Standards Committee met on Thursday, May 1, 2007 at the office of Holland & Knight. The meeting was well attended. We had 45 attendees, some by speaker or conference call.

We heard reports from our three Subcommittee Chairs: Mike Wilson for Classification Societies, who reported on the recent *PRESTIGE* and *ERIKA* decisions issued by the New York and Paris courts, and the ongoing EU antitrust investigation into alleged anticompetitive practices by IACS member classification societies.

As part of this portion of the program, we also heard from Vincent Foley, our Committee Secretary, who reported on the current status of the *PRESTIGE* appeal and the Kingdom of Spain's position regarding U.S. District Judge Swain's dismissal of the case for lack of subject matter jurisdiction.

We also heard from Phil Buhler, our Committee Vice-Chairman, who gave a very informative report on the factual background and key legal holdings of the January 16, 2008 *ERIKA* judgment that was issued by the Paris Court of First Instance.

Incidentally, a full English translation of the *ERIKA* decision, which is 278 pages long, is now available on our website, as is the excellent paper by Vincent Foley entitled "The *ERIKA* Judgment: A sea change in environmental liability for the maritime community."

Alan Van Praag, our CMI Subcommittee Chair, reported on the activities of the CMI and the upcoming International Conference in Vouliagmeni, Greece. Jean-Serge Rohart has already reported on the details of that conference, so I will not repeat them here, but would encourage you to attend. Those that would like to use frequent flyer tickets or upgrades, please book early, because they'll be difficult to come by. Only two airlines, Delta and Continental, fly non-stop from New York or Newark to Athens.

Larry Brennan, our Law of the Sea Subcommittee Chair, reported on the current status of U.S. ratification efforts for this important treaty. Prospects for ratification appeared to be very good late last year. In fact, diverse interests, including the U.S. State Department, the U.S. Navy, the U.S. Coast Guard, industry groups, including the offshore oil industry, and environmental groups, were all in favor of ratification. However, the prospects for ratification now seem to have gone back into the deep freeze, which from our perspective is regrettable.

[15309]

We also heard from Michael Sturley, Chet Hooper, and Vince DeOrchis regarding the status of the UNCITRAL's Draft Instrument on Transport Law. We were pleased to hear that the various industry groups that have been closely involved in the drafting process all appear to be solidly behind ratification, which hopefully bodes well for U.S. ratification prospects. The formal signature ceremony for this instrument is scheduled for the Fall of 2009 in Rotterdam.

We heard a very interesting presentation by Ernest van Buren, a partner with Blake Dawson in Brisbane, Australia. He spoke on compulsory pilotage in the Torres Straits between Australia and Papua New Guinea. This is an issue of great importance to the U.S. Coast Guard and the U.S. Government, and has substantial implications for the free passage or navigation of vessels through other narrow straits around the world, particularly Malacca and Hormuz.

We were fortunate to have Captain Chuck Michel with us from the U.S. Coast Guard, and he addressed the U.S. position on the issues raised by Ernie van Buren's presentation, and also gave us an update on what's going on at the IMO Legal Committee, and, in particular, the Draft Maritime Casualty Code, which is likely to become mandatory through an amendment to SOLAS.

We had a very spirited and vigorous discussion, albeit polite, on the provision which requires that a seafarer be informed of and allowed access to legal advice regarding the risk of self-incrimination.

Chuck Michel also addressed abandonment of seafarers, which is likely to become the subject of a new IMO-sponsored instrument or convention, and efforts to combat piracy, which is an ongoing problem.

Finally, since this is my last report as Committee Chair, I would like to thank the prior Chairs who helped mentor and guide me, including Michael Marks Cohen and Charlie Anderson, and perhaps borrow a few words from Alfred Popp, a member of the Canadian Maritime Law Association, and a good friend of this Association. Alfred was honored late last year by the IMO. He received the IMO's maritime prize and identified three areas which are likely to remain of paramount importance to the maritime community: namely, the marine environment, terrorism, and fair treatment of seafarers.

The IOCS Committee is particularly well suited to monitor these important subjects and to report on developments of interest to the U.S. Maritime Law Association. I am confident that this Committee will continue to do so.

[15310]

Madam President, that concludes my report. Thank you.

MS. BURRELL: Thank you very much, Chris. Thanks for your service, as well.

Jim Moseley, Jr., who will be followed by Bruce King for Marine Financing.

MR. MOSELEY, JR.: Madam President, members of the Association, our Committee was busy this week.

The Marine Ecology and Criminal Law Committee had over five hours of meetings in two cities, starting on Tuesday in Washington, D.C., and on Wednesday in New York. I'm not going to go over everything that happened in those meetings, obviously, but I would like to touch upon a few things.

The meeting in Washington, as you heard from Admiral Baumgartner, was a good and important meeting. I hope we're going to continue it.

I have to acknowledge Tony Whitman. It was his idea to bring the two Committees together in the tradition that was started by this Association many years ago to have meetings in Washington. Tony did a lot of hard work in putting together a good agenda, and I was happy to have our Committee join and partner with him.

We also want to thank Admiral Baumgartner and Captain Chuck Michel, who were very integral in putting the agenda together. And especially Captain Michel. Every time we would hear from him he would bring someone else to come speak to us. And we ended up having probably a five-hour agenda and three hours of allotted time.

We were very pleased with the attendance that we had. We had over 70 people at the law office of the Winston & Strawn, and Larry Kiern and his staff did a very fine job in assisting us in setting up the meeting.

Our goal was to have government people, not just MLA people, meeting in Washington. We had over 70 people in attendance, and I would say probably a third of those people were government lawyers and government staff people and subject matter experts. I'm not going to go over some of the other details because Tony will give you some of the details on some of those talks.

We had, besides the Coast Guard, Chief Judge Ingolia of the ALJ; the U.S. Coast Guard; members of the Department of Justice Environmental Crime Section, including the new Chief of Staff, Stacey Mitchell; FMC, MARAD, Con-

[15311]

gressional staff attorneys John Colbert from the House and Dabney Hegg from the Senate, and others. And we had many other subject matter experts that were all involved.

I want to talk about Richard Udell from the Department of Justice Environmental Crime Section, who gave us a very informative talk. He said that they are right now inundated with many cases from the U.S. Coast Guard. Most of them, as we know, were the oil-water separator cases, as well as falsification of oil record books. He gave us an update and a summary of pending cases. He also advised us that they are also having foreign referrals for prosecution when they are having problems with oil record books in coming to the United States. He touched upon the issue of whistleblowers; that they do recognize that they have to rely on evidence other than just the whistleblowers going forward.

I think one of the most interesting things that happened at the meeting was when a lawyer from MARAD got into a spirited debate with the Department of Justice as to MARAD is putting all this money into educating young people at Kings Point, spending \$400,000 in training, and then they turn out and get on a ship and sooner or later they have oil-water separator issues with the same person. And they wanted to know where the money was going on these fines. I think it was interesting to see the government as shipowner interfacing with the government as prosecutor.

In New York we had 70 members at the law office of Thacher Proffitt. We had a joint meeting to the extent that the Vessel Regulations Committee always has a couple of speakers that overlap with our speakers. So we went first, and then had Larry Kiern give us a congressional update at the end, and also Dave Dickman gave us a criminal update at the end. And we shared that with Tony's Committee.

Gary Mauseth of Polaris in Seattle gave us an update on NRDA, National Resource Damage Assessment, issues dealing mainly with coral damage, as well as restoration issues, noting that every country that has coral now recognizes the compensatory value.

We also heard from Katharine Newman of ConocoPhillips. She gave us an industry perspective on regulatory and environmental enforcement. She pointed out that since 2004, prosecutions have doubled and that there has been a change in corporate culture all throughout the maritime industry in dealing with the special seriousness of environmental crimes. This was welcomed by most of those people in industry. She also pointed out

[15312]

that not only has the culture changed, but environmental compliance plans have significantly improved. She told us what ConocoPhillips has done by placing a senior officer on board who understands MARPOL, and that is a quality assurance officer or a QA, which is a senior officer, about a second or third officer level.

We also were happy to have Professor Michael Sturley, who gave us his unique perspective on the *EXXON VALDEZ* case currently pending in the United States Supreme Court. And he gave us some background and some information, and we certainly appreciate his candid comments.

Alex Giles from Baltimore gave us a talk on the Ninth Circuit case of Pacific Merchant Shipping, dealing with California air emission standards.

And that concludes my report.

Madam President, it has been an honor to serve. And I want to thank Jack Vayda and Matthew Marion, who are my predecessors and have helped me very much. And I look forward to the leadership of Dennis Minichello at this time.

MS. BURRELL: I thank you very much, Jim, and indeed you have been a fine Chair. Bruce King will now report on Marine Financing.

MR. KING: Marine Financing met the day before yesterday. We were pleased to welcome the continued participation of the Maritime Administration. Larry Main from the Legal Department was there. Doug Cameron, the lawyer for National Vessel Documentation Center attended, as he usually does. We were also pleased to welcome Captain Michel from the Coast Guard.

On Monday, the MLA Board of Directors approved on behalf of the Association the two legislative projects that the Committee brought to fruition in April and that the MLA Board approved. Copies of both proposals will be published as the Committee's Formal Report and are available at the Committee area of the MLA website.

One is the legislation that would allow for a recordation of a bareboat charter with the National Vessel Documentation Center so that if a court, often a bankruptcy court, determined that its provisions were, in fact, a sale of the vessel with a retained security interest, the recordation of the charter would be treated as a preferred mortgage lien as a matter of law, thus providing the same menu of financing options for vessels that is currently available for aircraft and railroad rolling stock.

[15313]

The second proposal would allow vessels under construction to be documented with the Coast Guard at the commencement of construction to facilitate the filing and recording of a preferred mortgage at that time.

The Board approved those on Monday, just in time for Frank Nolan, Margorie Krumholz and I to start our meetings with the U.S. Senate staff on Tuesday to attempt to get the legislation adopted.

We're optimistic. We have a chance of getting them on the Coast Guard authorization bill this year, although that bill is pretty far advanced at this point.

Then at the meeting we had a seminar to educate us on distinguishing between true leases, capital leases, and synthetic leases, and the varying ways in which leases can be treated at law for accounting and tax purposes. If the vessel leasing statute is adopted, that is something the marine finance lawyers are going to have to become familiar with.

This is my last report as Marine Financing Committee Chair. Our new officers will be Frank Nolan as Chairman, Margorie Krumholz as Vice-Chairman, and Patrick Cameron as Secretary. The Subcommittees' Chairs will be continuing in place.

And I thank the Officers for all of their support. It's always been an active Committee and it couldn't be done without them. I particularly would like to thank the continuing support over the last four years from Ray Hayden, Tom Rue, and Liz Burrell. It has been a pleasure serving with them.

That concludes my report.

MS. BURRELL: Thank you very much, Bruce, on all counts. And you have, indeed, moved that Committee forward in the fine tradition that it has established.

We will have the report on Marine Insurance and General Average from Jonathan Spencer, to be followed by Marine Torts and Casualties, Jack Scalia.

MR. SPENCER: Good morning.

The Marine Insurance and General Average Committee met on Wednesday morning, a well-attended meeting at the Wall Street premises of CNA/MOAC, for whose hospitality we are always most grateful.

[15314]

Gene George of Cleveland, the Committee Vice-Chair, opened the meeting by presenting the Committee's newsletter, which I recommend to you. There are copies outside. They are on the Committee home page on the MLA website.

We have a lead article, this time by Bill Boeringer and Bill Milliken of the Hayden & Milliken firm in Miami, which deals with the tripartite relationship between insurer, insured and attorney within the context of the Restatement, ABA rules, and various state bar association rules, together with our usual digest of significant cases prepared, as usual, extensively by Gene George and assisted by Steve Rible.

Within these cases there is a continuing trend to review *uberrimae fides* and topics of disclosure and misrepresentation which we have identified in previous newsletters. It's an interesting trend. And, again, I commend these case reviews to you.

The meeting continued with a presentation by Gene George on the continuing insurance fallout from the 2005 hurricanes, and Gene will be preparing a paper for us.

We are going to have a joint Committee meeting in Long Beach with Off-shore Industries looking at some of this. And by virtue of alphabetical precedence, I could steal the thunder on it, but I'll leave it to Grady Hurley to describe that in more detail.

John Woods for the Hull and P&I Subcommittee again dealt with some case reviews for us, and told us that the AIMU is currently reviewing the American Institute hull clauses. The potential changes he described are evolutionary and don't seem likely to cause much controversy, but they will be up for discussion.

We had a guest speaker, in keeping with the practice of the Committee. This was Sam Senders from EPS Settlements. And again we had a very interesting presentation, which is on the Committee home page, if you want to look at it. Sam talked about the value of structured settlements/future periodic payments as a negotiating tool in a settlement discussion, and that produced a lively debate.

Mike Bird from Canada mentioned to us that there is a forthcoming change to the Insurance Companies Act in Canada, which could bring marine insurance within the scope of Federal regulation for the first time. If anybody needs to pick his brain about that, he's in the back of the room.

[15315]

I think that's about it. But we did have the quote of the semester. There was a case in the Southern District of New York, *Federal Insurance v. PGG Realty*, and this involved a motor yacht, the engines of which had failed, which then became swamped in heavy weather and was a total loss. Insurers brought a suit attempting to deny coverage on the basis of alleged breach of the duty of utmost good faith, alleged breach of the absolute implied warranty of seaworthiness, alleged breach of the negative implied warranty of seaworthiness, and alleged failure to meet burden of proof. The Court in dismissing this case on all counts explained to us—and this is a quote: “Not every accident is explicable, yet accidents still occur, which is why people have insurance.” We think we might adopt this as a Committee mantra.

Thank you, Madam President.

MS. BURRELL: Thank you very much, Jonathan.

After Marine Torts and Casualties, we'll hear from Grady Hurley from Off-shore Industries.

MR. SCALIA: Madam President, members of the Association, our Committee met on May 1st, Thursday. We had 70 people in attendance. Due to the courtesy of Thacher Proffitt, we had seats for almost every one of them.

The Committee extended CLE credits for at least an hour of time. Lisa Reeves was instrumental in assisting us with that. And we had the able assistance of the Young Lawyers Committee, who took care of the paperwork and are going to make sure that everyone gets the CLE credit.

Paul Edelman, my Vice-Chairman, gave his update on maritime cases, which included information on the *EXXON VALDEZ*, punitive damage, the application of the Jones Act, and an interesting case revolving around the misuse of properly functioning equipment which rendered the vessel unseaworthy. He was very happy about that; we weren't.

Lisa Reeves gave her update on limitation, and particularly she was speaking to us about the denial of the Staten Island Ferry limitation case. But to quote Lisa in a word: “Limitation is not dead.”

Robert Klawetter and Christine Schovajsa gave us a report and a paper on current developments in forum selection clauses and Jones Act cases, and we did have some discussion on that issue. One of the things they said was

[15316]

that the enforceability of these types of clauses is far from clear, but Mr. Klawetter urged us to continue to pursue these.

All of the papers that were presented are available right now on the Committee's website.

I would like to give particular thanks again to my Vice-Chairman, Paul Edelman, and to Lisa Reeves, my Secretary, for their able assistance. They make my job very easy.

That concludes my report.

MS. BURRELL: Thank you very much, Jack. Grady Hurley will now report on the Offshore Industries Committee's activities.

MR. HURLEY: Madam President, on May 1st our Offshore Industries Committee quietly celebrated our fourth anniversary at the office of Thacher Proffitt.

On behalf of our Offshore Industries Committee, our Vice Chair Brad Jackson, and Secretary Ryan Acomb, we would like to thank you for your stewardship throughout the tenure of our Committee.

With respect to our agenda, the theme of our meeting was alternate energy sources and emerging trends in the offshore industry. Larry Arcell of New Orleans participated in the discussion on Medicare set asides, which applies to platform workers and eventually will and inevitably will extend to Jones Act personal injury claims.

Homeland security issues were discussed as affects offshore operations and, in particular, the Transportation Worker Identification Card program, which will become fully effective in the Gulf of Mexico as of September 2008, and which will also require attorneys to have TWICs if we wish to go offshore to docks to investigate certain claims.

Hal Watson of Houston, Texas, made a presentation on the *Magnolia Industrial v. Devon* case, which discussed the Fifth Circuit test employed to determine whether a contract for repair of an offshore facility with vessels was ancillary, as part of the project was within the scope of the subject of maritime jurisdiction, in light of the Supreme Court case in Kirby, which was an intermodal transportation case.

[15317]

Our meeting also included a presentation by Mitch Hudson of Washington, D.C., who is with MARAD. Mr. Hudson discussed the Deep Water Port Act of 1974 and the emerging L&G industry in Long Beach, California.

As was indicated, we will hold a joint program with the Marine Insurance Committee, at which we hope to offer CLE credit.

Lastly, at the end of the meeting, Frank Barry reminded us that in March of 2009 Tulane holds its Admiralty Law Institute, and I think he has brought some brochures with him.

Madam President, thank you. And this concludes our report.

MS. BURRELL: Thank you very much, Grady. Bob Zapf will tell us about our next Fall Meeting. After that we will have Practice and Procedure, which has a resolution.

MR. ZAPF: Good morning, ladies and gentlemen.

This fall, from November 5th through November 8th, we are going to have the Annual Fall Meeting in Long Beach, California. The venue will be at the Hyatt Hotel. It is very conveniently located in the center of downtown Long Beach, convenient to the Committee meetings, which will be held in various offices provided by the local firms. So it will be run as a business meeting similar to the meeting that we have here in New York.

Immediately preceding the Committee meetings, which will begin on Thursday and continue on Friday, with a General Meeting on Saturday, on Wednesday afternoon we are going to have a somewhat unique CLE opportunity, one which I think will be of great practical interest to all of us. We are organizing a port tour of the LA-Long Beach Harbors. This will be by vessel. We'll have a chartered boat.

In the middle of the voyage we will break, go ashore at the Maersk Terminal, one of the largest container terminals in the United States, and have a bus tour of that terminal. We will then conclude with the balance of the voyage. There will be speakers on both ends of the Maersk tour, so there will be CLE credit.

In addition, we are going to have a hosted reception on Thursday evening at the Aquarium of the Pacific, which is a lovely, beautiful venue, and I think we'll have a very good time there, as well.

[15318]

Blocks of rooms have been reserved from Tuesday night through and including Saturday. So if you can come early and/or stay late, rooms will be available to you.

The information is fully posted on the website. There is a link for reservations for the hotel.

We urge you to make reservations early. We have a very good rate. The airfares may be going up, as many of us know, so getting your reservations in early I think is to the benefit of all of us.

I would like to thank the members of the Committee who have been working with me on this, and I won't name all of them, but there are a few that have been exceedingly busy. Tom Russell has been very helpful in organizing the port tour and the physical arrangements. Forrest Booth, John Edginton, their past experience and expertise has been very, very helpful. Bill Collier, who is working with me as a Co-Chair to organize the event. And Mike Swain and Erich Wise, who are working on putting together the Committee meetings.

So I look forward to seeing you all. Again, it's November 5th through November 8th. And we usually have good weather at that time, and we hope you will all come and enjoy it. Thank you.

MS. BURRELL: I thank you very much, Bob. We'll look forward to it.

Andy Goldstein for Practice and Procedure.

MR. GOLDSTEIN: Madam President and members of the Board, thank you very much for allowing me in the last four years to be the Chairman of the Committee.

I'm not going to spend any time, because David Sharpe is here and will explain to you what we're intending to do. It's been a 10-year battle which culminated on Wednesday, this last Wednesday. I hope the Association will support the Practice and Procedure Committee and what we're attempting to do. David.

MR. SHARPE: Madam President, members and friends. Andy described our proceedings as a battle. This is something of an exaggeration. My notes say that what the committees on the Model Local Admiralty Rules have done is to show that we really care very much about each other.

[15319]

This got started with Phil Berns, who hired Mike Underhill to accumulate Local Admiralty Rules of District Courts from all over the country. Then Phil and I got engaged with this. I took a bundle of these things with me to Tulane in 1982. We discovered, thanks to Peter Hess, that it was possible to arrange Local Admiralty Rules in a rational fashion, and we simply linked them to the lettered Supplemental Rules for Admiralty Cases.

In 1986, the Practice and Procedure Committee voted a form of Model Local Admiralty Rules, and they simply went from the Committee, with the signature of the President, to the Chief Judges of the maritime districts in case they needed them. We like Judges, too. And we also like junior associates in law firms who get fingered by the district committee to say, "Oh, by the way, we need to look at the Model Rules." And can you imagine the dismay of a junior lawyer who is confronted with having to gin up suddenly a set of Local Admiralty Rules.

Well, for almost 30 years now they have had a set that they can turn to. They don't have to use them. And this is important. We decided early on, and we're still working on this, that we don't do paraphrases. We stick with what is at the low level of who moves first, the marshal or the clerk, and who does what. We're not concerned with constitutional law. If there is something else in place, we follow it.

On one occasion, that has to do with these changes, we actually got there first. "We," the Model Local Admiralty Rules, got there first, trying to work out "not found within the district," but we took a local posture because we could not really do what we wanted to do. What we wanted to do was to say "not found in the district" is defined by when process is served.

Now, thanks again to Practice and Procedure Committee work with Bob Zapf, the Supplemental Rule, our father, has been changed and now we follow it. So we were there first, we did less than we wanted to do. Now the Supplemental Rule does what we want it to do and, of course, we don't have to do anything because we are at a low level.

And this also stresses something I think you should know, and that is that we are there to help the marshals get along with the clerks, get along with the judges, get along with the magistrate judges. This is interstitial smoothing out. We are not interested in controversy.

We have rejected several possible changes. Some good changes, by the way, were suggested by the Young Lawyers. Katharine Newman has put us in

[15320]

touch with Young Lawyers. And, you know, the young eyes do see things that need to be seen. So that has been helpful.

We're not controversial. We have made a few changes, largely cosmetic changes.

I thought I would read you one section of the 1997 version that has been changed, 1997 reflecting, I think, fatigue in the Drafting Committee. I was there with Jimmy Bartlett and also with Andy Goldstein when we hammered this thing out.

“Order of proof at trial in limitation of liability cases:

“Where the vessel interest seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former, or the party asserting a claim against the vessel or owner in the latter, shall proceed with its proof first, as is normal at civil trials.”

Are you ready for the quiz? We have tried to unscramble that just a little bit. But that's the level at which these changes are proposed and have been made.

Yes, we have done a little something about Rule B “not found.” We have responded in these Model Local Admiralty Rules to private process servers in Rule B and Rule C cases.

Rule G, which we used as a catch-all, is gone, because now there is a vastly detailed Supplemental Rule G which our Local Rule G rules have nothing to do with. And so we have abolished some and relocated others, but not made any policy changes whatever.

I've done, I think, enough to describe this. What I'm trying to do is to support your vote in approving these Model Local Admiralty Rules for the first time by this Association.

And let me close my remarks by saying: Why Model? Why not Uniform? What we're interested in under our Bylaws is uniformity. What we decided 30 years ago was to avoid all of the “ Sturm und Drang ” that goes with trying to get changes for Uniform Rules through Washington, D.C., the Administrative Office. I hear a chuckle here and there.

If you've ever tried to do this, as far as we were concerned, it was not worth the effort to try to impose Local Admiralty Rules on a living soul. So

[15321]

what we did was to follow the other policy, which is to say “Here is a set of Model Rules. Take them, leave them, change them.”

Many districts have adopted them. All of those districts have changed them one way or another. That is the way it is supposed to work, and that is a success, as far as we are concerned.

So, Mr. Goldstein, Andy, would you like to conduct the motion?

MR. GOLDSTEIN: I move that the Association enact as Model Local Admiralty Rules the rules which were generated and changed on Wednesday the 20th of April.

MS. BURRELL: Thank you very much. Is there a second? Is there any discussion? In favor? Opposed?

We have new Model Rules for the Association.

Thank you. I can't tell you how tirelessly Dave and his group worked on this project. Just reading the correspondence in copy was enough to keep me busy. So, thank you very much.

Frank DeGiulio will now report for the Recreational Boating Committee.

MR. DeGIULIO: Madam President, I think I told Mr. Bonner three minutes or less, so you can start the clock. Good morning, members and guests.

Recreational Boating met for two hours yesterday at the New York Yacht Club. We covered more than a dozen substantive topics. This morning I would just like to highlight two of those.

The Department of Homeland Security—and I've mentioned this before—is in the middle of an assessment of security risks from small vessels. It's been going on since last June. There was a national summit in Washington, and that has been followed up by several regional summits.

One of the things I want to highlight is there happens to be a regional summit tomorrow in Long Beach, although I doubt any of us are going to be there. But there is a Northeast regional summit scheduled for June 7th this year at the Massachusetts Maritime Academy in Buzzards Bay. If anybody from the Association is interested in attending that, please contact me. The Coast Guard is anxious to have our input to these issues which are complicated, obviously.

[15322]

I dare say, what the Department is about to tackle, it may be impossible to eliminate all of the risks, but certainly they're trying to reduce the risks. On Monday the Department released a 57-page document called "Small Vessel Security Strategy." It has the various goals for risk reduction listed in that document, but there are no solutions proposed at this point.

I would like to point out to the members of the Association that it's my understanding that much of what may be done to address the risks, the terrorist threat of small vessels, will be done at the local level. If you are a member of your local area security committee, you should be alert to this, you should participate. As I say, the Coast Guard is looking for our participation in this process.

In this regard, yesterday we did hear from Jeff Hoedt, who is Chief of the U.S. Coast Guard Office of Boating Safety. He has come up from Washington to tell us where things stand. In terms of implementation, as I understand it, the target right now is next September to implement a plan to address the security risks. We need to be involved in that process. We're invited to be involved in that process. So I would urge all of the members of the Association to keep an eye out, especially on the local level.

The other thing I would like to highlight is somewhat related, because the old idea of expanding the vessel hull identification number, which goes back more than 20 years, has been refloated by the Coast Guard, if you will. The concept here is to expand the standard hull identification number for vessels from 12 to 17 digits. The idea is to include more information in that number to identify a specific vessel, prevent fraud, increase security of loans from banks, and that sort of thing.

There is a request for comments out right now. You will find that at 73 Federal Register 52, Page 14193. The deadline for comments is June 16, 2008. Members of the Association that have clients in the recreational boating industry, I think you will want to alert your clients. And they may have comments. The request for comments is on the cost-benefit of the expansion of the number. And in the past the failure to enact this expansion has resulted from an inability, as I understand it, to prove that the benefits exceed the costs.

That concludes my report, Madam President.

MS. BURRELL: Thank you, Frank.

Tony Whitman, to be followed by Rich Buckingham.

[15323]

MR. WHITMAN: Madam President, I shall be short because I can say “me, too” to Admiral Baumgartner and “me, too” to Jim Moseley, Jr. with regard to the meetings of our committee.

I do want to just touch on a couple of highlights very briefly.

We did meet in DC. Those of you who were not able to attend missed a wonderful meeting. To have the three senior representatives of the House and Senate committees who are most involved in maritime affairs at our meeting listening to us, sparring with us, was I think tremendously useful to them to be able to hear from our side. What especially piqued my interest was that there was clearly tension among and between various aspects of the government itself. The MARAD is not very happy with what the DOJ prosecutors are doing, our Congress is not happy with the FMC, and so on and so forth.

And we heard that you had to read between the lines sometimes. But there was a lot going on there, and I think we actually have advanced the idea of having a true forum for bringing aspects of government and industry law all together, which we’re going to try to repeat and keep that going Tuesday of MLA Week in the spring. So think about that. A year from now we would love to see you in DC at the time that we have our committee meeting again.

Let me rush through what otherwise would have been my report to say that Admiral Baumgartner made a promise, and the promise was there will be no train wreck as to TWIC in September of this year. And I’m delighted to say that I am scooping Dennis Bryant. Dennis doesn’t know this. But 20 minutes ago there was, at least there was to be—you’re late, Dennis—a press release, and Admiral Baumgartner has been kind enough to provide this information to me. The TWIC compliance deadline will be changed from September 25, 2008 to April 15, 2009, which gives people a little bit of breathing room.

Let me say that, also just briefly, we had input from General Counsel to MARAD and General Counsel to the FMC, both of whom, although the cast of characters has changed a little bit over time, both of whom have come to our meetings traditionally and taken just a little bit of time to provide some things that we found interesting, and one of these was alluded to by Jim earlier: MARAD as shipowner having the same problems with the DOJ that our shipowner clients have. And that was interesting.

MARAD has now an environmental directorate, a new environmental director charged with handling issues, environmental. Ship disposal is a big deal for them, obviously.

[15324]

In the FMC there is a new order. The FMC's new Acting General Counsel said that the FMC got religion on the road to Washington. He said that Elijah had given them religion—Elijah Cummings, our Congressman from Maryland—and had come down very hard on the FMC for managerial issues. And they actually now will meet as a commission instead of not bothering to get together for their meetings, and various other changes to implementation.

Madam President, that concludes my remarks. I thank you for the opportunity. And please put on your calendars Tuesday of Spring MLA Week next year.

MS. BURRELL: Thank you very much, Tony. I want to commend both Tony and Jim Moseley, Jr., for their initiative in reestablishing a Washington Committee meeting, which was of extraordinary value.

Rich Buckingham will report for the Salvage Committee.

MR. BUCKINGHAM: Madam President, members, and guests, the Salvage Committee met once again at the offices of Holland & Knight on Wednesday. It was a well attended meeting, several by conference call, as well. Although I will say that our membership ranks in the Salvage Committee would swell if the Coast Guard would back off on its marine safety efforts, or at least stop extinguishing our moveable beacons that we strategically place around the coasts.

As always, Jason Harris, our Secretary, provided his impressive semi-annual "Salvage Case Law" update, copies of which I believe are available out on the table.

Jim Shirley was kind enough to give us a preview of a very interesting paper that he will be presenting at the International Tug and Salvage Convention in Singapore later this month. It's a paper dealing with the impact and interplay that laws and conventions protecting maritime cultural heritage are having on traditional salvage laws. Unfortunately, because he hasn't presented the paper yet, we don't have copies of it, but we look forward to that.

There was a presentation from my office, the Navy's Office of Supervisor of Salvage and Diving, dealing with joint initiatives by the salvage industry and government to plan for and prepare for possible worst case salvage and harbor clearance scenarios in our major domestic ports, which is a high profile issue in view of the continuing terrorism threat.

We also had an interesting report from Mike McHale on his trials and tribulations in challenging a truly archaic salvage statute that had its roots in

[15325]

the early 19th Century, and the language of which has been inadvertently carried forward in several iterations and codifications of U.S. law.

It's interesting how many times this was carried over and people didn't realize the language was in there. And then in the most recent codification of the shipping laws, Title 46, somebody actually read it and started causing problems with it, because the net result was that you couldn't engage in salvage or wreck removal on the coast of Florida unless you had a license issued by a U.S. District Judge.

This was news to everyone. But thanks to Mike, and largely as a result of his? I would say almost single-handed-efforts, there is a provision in the now pending Coast Guard Authorization Bill which would effectively repeal that archaic and troublesome statute.

Finally, Professor Bederman, Dave Bederman, gave us an update on some fascinating litigation in Tampa regarding the so-called *BLACK SWAN* case, which is sort of on the cutting edge of treasure salvage law and has a lot of interesting issues concerning sovereign immunity.

That concludes my remarks.

MS. BURRELL: Thank you very much, Rich.

JoAnne Zawitoski is going to speak for Stevedores, Marine Terminals, and Vessel Services and will be followed by Young Lawyers.

MS. ZAWITOSKI: Madam President, Officers, distinguished members and guests, I'm here reporting today on the meeting of the Stevedores, Marine Terminals, and Vessel Services Committee on behalf of Doug Matthews, who could not be with us today.

We had an extremely well-attended meeting. Apparently, all of the Committees had good attendance this time around, but our Committee's meeting had particularly high attendance. We had standing room only at our meeting, just about. It was a very successful meeting.

The Committee has a broad mandate, but I'm going to hit the highlights of three areas.

One is in the area of Longshore Act developments. We discussed the ongoing litigation on the concurrent jurisdiction between the Jones Act, the

[15326]

Longshore Act, and various State statutes. We also discussed a provision of the new Coast Guard Authorization Bill that proposes to exclude workers who either build or repair recreational boats from the scope of the Longshore Act. We talked about the fact that this provision seemingly was slipped into the Bill by some vessel-building interests. So, you might want to keep an eye out for that provision.

In the area of stevedoring and marine terminal operations, we discussed the recent decision in the District of Maryland in the case of *American Roll-on/Roll-off Carrier v. P&O Ports*. This is a case in which the court allowed the stevedore to limit its liability to an ocean carrier in an indemnity claim to \$500 per freight unit based on the terms of the stevedore/carrier contract. It's a very interesting case. You might want to take a look at it, if you are interested.

David Loh gave us an excellent report that's going to be published on our Committee web page on recent cases involving freight forwarders and their liability.

And, finally, we were very honored to have a presentation by Michael Bird, the President of the Canadian Maritime Law Association, on a recent Canadian Federal Appellate case called *Canadian Pacific Railway and Boutique Jacob*. That was a case in which the railroad was held to be entitled to limit its liability to the same extent as that allowed to the ocean carrier through its bill of lading by virtue of the railroad's tariff. So I also commend that case to you, as well.

And, Madam President, that concludes my report.

MS. BURRELL: Thank you very much, JoAnne. Alex Giles for Young Lawyers.

MR. GILES: Good morning, Madam President, members, and distinguished guests.

The Young Lawyers Committee met yesterday at a new location, the law firm of McDermott & Radzik. We had a nice mix of new and familiar faces.

In addition, we welcomed some special guests, including Admiral Baumgartner, who spoke to the Young Lawyers about a proposal for pro bono representation of indigent mariners before license revocation and suspension proceedings for which the Coast Guard is seeking the possible assistance of the Young Lawyers.

[15327]

Dan McDermott of the Uniformity Committee addressed the Young Lawyers about a circuit split project for which the Uniformity Committee would like our assistance in helping to bring current.

And finally, Larry Kahn of Freehill Hogan & Mahar, and a former Chair of the Young Lawyers Committee, was gracious enough to speak to our Committee on a pinch-hit basis about successfully marketing within the confines of this Association.

As everyone knows, the Young Lawyers continue to work on several important projects for various Standing Committees of the Association. As we try to consistently reiterate, if any other Standing Committees need our assistance or think that we could be of assistance, please feel free to reach out to any of our officers.

Finally, as is a tradition of the Young Lawyers, we reconvened last night in the Meat Packing District at a very nice restaurant where all I'm permitted to say is that a good time was had by all.

That concludes my report.

MS. BURRELL: Thank you very much, Alex. I don't doubt the last observation. Rob Hopkins will now speak for AMC.

MR. HOPKINS: Thank you, Madam President. Every few years American Maritime Cases will dedicate an annual volume to a distinguished international maritime attorney. This is something in the 80 years that the AMC has been around that's only occurred about 26 times.

Typically we have had members of this organization, members of other international maritime organizations, and all those members have come from major international ports. This year I'm proud to announce that this year's volume will be dedicated to Phil Berns from the renowned international port of Las Vegas, Nevada.

Phil has had such an incredible career at the Department of Justice. He has done so much for this organization over the years. I can tell you personally he has done so much for AMC. I just want to congratulate Phil. I wish he was still on the line, but for once it is nice to get the last word in for Phil. So, thank you.

MS. BURRELL: Thank you very much. I think that is very fitting. I now call on Mike Ryan, and Mike will be followed by Kim Kearney.

[15328]

MR. RYAN: Madam President, distinguished guests and fellow members.

The Committee on Continuing Legal Education didn't really have a formal meeting, but we did get to say hello to each other.

I would say in the last year I've noticed an increase in Committee meetings setting up programs to offer CLE. This is something I think should continue and will continue.

In that connection, there was an appreciation made by Jack Scalia for the participation that the Young Lawyers have given to this, and I would like to see that continue, because they do a good job in helping make this a lot easier. There is some paperwork involved, not of our making. It's a requirement of the State.

Be that as it may, attendance, I think, is something that will increase at Committee meetings, because the MLA has arranged to be an authorized provider of CLE credit by attendance via telephone. That is becoming more involved in Committee meetings.

You pick up the phone, call in as you do. The only real difference is that the Committee Chair or a designated person towards the end of the presentation has to give a password, such as "Geronimo," and the listener on the other end will respond by telefax, e-mail, possibly writing—hardly a smoke signal—and give it back. And that's the verification of your attendance. That should increase CLE participation. One hopes, anyway.

Going to the individual: CLE is really the responsibility of the individual, each and every one of us.

The MLA is an accredited provider for New York. Now, having said that, those here who are New York members, you don't have to listen to the rest of it.

For those who are not, which most of you are, New York also has comity with 28 other jurisdictions, including the Law Society of Hong Kong and the Law Society of England and Wales. Of those, I would say approximately 19 states have some connection with wetness; lakes, oceans, et cetera. Some of the states that would have an interest in we'll say maritime matters, Illinois, for one, as an example, are not on this comity list.

So, as an individual, my suggestion would be that you check with your state bar to find out if they have comity with New York. If they do not, most

[15329]

states, if you go to them, and ask about credit, will tell you what they require.

So, ask them: "I am attending a meeting in New York or New Orleans or California, Long Beach. If you don't recognize this, what will it take for me to get it? What documentation do you need?"

It's better if you do this up front, because you may go to a meeting and then say, oh, maybe I should find out about it, and then they tell you, well, I need this, this, and this, and you have to go chasing a paper or some other document that's necessary six months after. It's a lot easier to bring it home with you.

And, with that, that concludes my report. Enjoy the dinner tonight, safe home to all of you, and don't run with scissors.

MS. BURRELL: Thank you very much.

Kim Kearney will report on the Uniformity Committee. While Kim is coming up, I will note that we expect a really outstanding attendance at the Dinner at Pier 60 tonight. What are we up to?

MR. CLYNE: 975.

MS. BURRELL: Excellent. The cocktails are at 6:30, dinner is at 7:45. I believe there will also be buses back to two Midtown areas after the dinner. I look forward to seeing all of you tonight.

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

I am very pleased to report that the Uniformity Committee also was well attended this Wednesday, and we drew several new participants by offering CLE credit. We also had three new members of the Committee who presented case discussions.

In March of this year, Committee members Dan McDermott and Betsy Bundy of New York wrote an amicus brief on behalf of the MLA in support of the petition for a writ of certiorari in the *Magnolia Industrial Fabricators* case. And Betsy Bundy led up a Committee meeting with a presentation of that case.

Hal Watson, who is counsel for Magnolia, was also present to provide his insights.

[15330]

Danielle Kaminski of New York, Jedd Malish of New Orleans, and Tim Lord of San Francisco also led very interesting discussions of recent decisions, and their excellent papers will be published in our report.

Madam President, that concludes my remarks. And on behalf of our Committee, we would like to thank you for attending on Wednesday, and for your invaluable support to the Committee during your presidency.

MS. BURRELL: Thank you very much, Kim.

I should add that Kim is also one of our retiring Chairs. She has done an incredible job in leading the Uniformity Committee for which I have a special fondness, because I chaired it years ago. Well done, Kim.

Kevin O'Donovan for Website.

MR. O'DONOVAN: Thank you, Madam President.

The Website and Technology Committee met yesterday morning at 11:00 o'clock. We had a small and select group of members attending the meeting.

Most of our discussion was about technology. We discussed the use of voiceover Internet protocol, which is essentially telephone over the Internet, the advantages, disadvantages of that.

And then the other lively discussion was about social networking sites, also segueing into lawyer rating sites. Most of you probably don't know, but there is a website out there that probably rates each one of you. It's called www.avvo.com. You may want to check and see what your rating is and if there are statements on there that are incorrect that you might want to change.

Madam President, that concludes my report.

MS. BURRELL: Thank you very much.

Dennis Bryant, do you want to say something about Title 46?

MR. BRYANT: Thank you, Madam President. There being no questions, that concludes my report.

MS. BURRELL: Well done.

[15331]

MR. BRYANT: It has been a seven-year process to get Title 46 codified and recodified, whatever the term is. And we were fortunate enough to be invited to participate early on, and were largely listened to, except for some strange reason with wrecking in Florida. They ignored our recommendation.

I have had the honor and pleasure of being the Chair of that Ad Hoc Subcommittee.

I want to acknowledge the fine work of Harold Watson as the Vice-Chair. But it was really the MLA itself that provided the invaluable comments that are reflected in that codification. And if I could ask everyone who participated in the Ad Hoc Subcommittee formally or informally, submitted comments, advised us when we were screwing things up, could you please stand briefly, all of you? There are many here.

The Title 46 has been recodified. The courts are starting to use the new section numbers. You're going to have to learn them as you did in 1984 when they codified the first part of it. There will be some inadvertent substantive changes. Be aware.

As I said, they did not listen to us entirely. We did not catch everything. But it will be much improved over the old system where it was hidden away and couldn't be found. It's now in a semi-logical order.

And thank you very much for your participation, even though you didn't want to stand. Thank you.

MS. BURRELL: Thank you, Dennis.

Dave Farrell will report for the Ad Hoc Committee on Short Sea Shipping. He will be followed by Tom Rue, who will have two reports, I think.

MR. FARRELL: Thank you. Good morning.

The Ad Hoc Committee on Short Sea Shipping met yesterday at DeOrchis & Partners, and we voted to change our name to the Ad Hoc Committee on America's Marine Highway. One of the reasons is it better reflects our goal of helping industry and government rejuvenate coastal shipping to provide a green solution to U.S. highway traffic congestion.

Your Co-Chairs, Kent Roberts and I, held a CLE on the Energy Independence and Security Act of 2007, which established some incentives for a marine

[15332]

highway program, now codified at 46 U.S.C., §§ 55601-05. We also discussed some remaining legal impediments that industry would like to overcome.

And we had a very good presentation from Clayton Cook, who talked about the Act's opening up of MARAD's Capital Construction Fund to vessel owners interested in getting into the marine highway. The Capital Construction Fund allows vessel owners to defer tax payments virtually indefinitely and magically create a private fund that can be used for construction, purchase, or refurbishment of vessels to be used in the marine highway.

We also had a wonderful presentation from Rand Pixa, the Deputy Chief Counsel at MARAD, who showed us a video that MARAD has put out entitled "America's Marine Highway Initiative." I'll give you one statistic: It takes one gallon of fuel to move one ton of cargo 70 miles by truck, 420 miles by rail, and 575 miles by barge.

We had a great presentation from Bob Kunkel, who has been advocating for the marine highway over the last decade. He gave us great insight into the hurdles industry has faced and some of the innovative plans that are about to take off in the near future.

We'll be watching these developments closely in the months to come. I'm going to put the CLE papers on our website for you to look at.

And, importantly, please communicate with your clients who want to get involved in this emerging area of maritime commerce. There are great possibilities present, particularly the self-financing scheme available through the Capital Construction Fund.

Thank you.

MS. BURRELL: Thank you very much, Dave.

Tom Rue will report on Environmental Crimes.

MR. RUE: Madam President, members and distinguished guests, Michael Chalos asked that I make the following report with regard to the MLA initiative, which, as you will recall, is an effort to facilitate trust and understanding between the government and industry in cases of MARPOL violations.

At the end of January at the Department of Justice in Washington a meeting was held at which the following individuals attended: Stacey Mitchell,

[15333]

Richard Udell, and Joe Poux of the Department of Justice; Captain Chuck Michel of the United States Coast Guard; Peter Hinchliffe of the International Chamber of Shipping; Joe Cox of the American Chamber of Shipping; Joe Ludwiczak from the Liberian Shipowners Council; President Burrell, and myself.

Our effort is to facilitate an understanding between the government and maritime industry. To this end, we are trying to restore trust and to arrive at an agreement between the government and maritime industry that will give consideration under appropriate circumstances to the owner's record and the owner's efforts at compliance.

Through the drafting skills of David Dickman, our member of Washington, D.C., we put on the table a draft agreement which is in many respects similar to the Sea Carriers Initiative. That agreement is now under consideration by the government. We were informed on Tuesday that we would be given a written reply to that document in the very near future.

Madam President, that concludes my report.

MS. BURRELL: Thank you very much, Tom. I think it is time to call on you again for another report, that of the Nominating Committee.

MR. RUE: Madam President, members and distinguished guests, it's my privilege to make the following report on behalf of the 2008 Nominating Committee by placing the following individuals as nominees for the following offices:

For President of the Association, Mr. Warren J. Marwedel of Chicago; for First Vice-President, Mr. Patrick J. Bonner of New York; for Second Vice-President, Mr. Robert B. Parrish of Jacksonville; for Secretary, Mr. Harold K. Watson of Houston; for Membership Secretary, Mr. David J. Farrell, Jr., of South Chatam; and for Treasurer, Mr. Robert G. Clyne of New York.

For the four Board positions, the following individuals: Mr. Frank P. DeGiulio of Philadelphia; Ms. Barbara L. Holland of Seattle; Mr. Robert B. Hopkins of Baltimore; and Ms. Kimbley A. Kearney of Chicago.

We move their nominations.

MS. BURRELL: I will call on Ken Volk. By the way, I don't know if I needed to be nominated for Immediate-Past President—

[15334]

MR. RUE: That's automatic.

MS. BURRELL:—but I'll accept.

MR. VOLK: Madam President, I am pleased to move that the Nominating Committee's report be adopted, that further nominations be closed, and that the Secretary record that the vote is unanimous.

MS. BURRELL: Is there a second? In favor? Opposed? Wonderful. Thank you very much.

MS. BURRELL: Before I relinquish the podium to the new President, I would like to say a few words.

When I stood in this place two years ago, I had many people to thank, and now I have even more people to thank. Of course, the first and foremost of these are my fellow Officers. You may think that we all have titles and positions, but in fact we work as a group. We support each other, we contribute our views and insights, and what we share is a love of the Association and the strongest desire to see it prosper and thrive.

With that common goal, help has been given before I asked for it. There has always been somebody willing to pitch in and get the job done. Each individual has contributed their talents, their individual perspectives, without any degree of contentiousness, but rather, with the fruitful outcome of combining a variety of points of view and a variety of perspectives. Our differences have always been enriching rather than divisive. Not only has everyone always spoken in good faith; they listened in good faith. I have been privileged to be part of many fine working groups, but I must say this was the most exceptional experience in my life on that score. I therefore want to thank Warren and Pat and Jim and Bob and Phil, and my mentor and guide through the thickets, Tom, for all of the great help that they have given me at every turn. They have kept me on the road.

And, of course, speaking of Officers, I would be remiss if I did not say that there hasn't been a Past President who has not generously assisted me and supported me throughout my Presidency.

Every person who served on the Board during my tenure, too, also has exemplified the very best of this organization. The Board has always been the policy-making organ of this group, but here in the last few years certainly it has not just been making the policy, it has been effectuating it.

[15335]

The Board has really reached out to the local members and their cities and regions, undertaken a great many more activities, and done all of this with tremendous energy and goodwill.

Because I had relied upon the Board members, in preparation for the first Board meeting that I was going to chair, I actually assigned what my daughter termed “homework” for the Board. Instead of resenting this imposition, this “working out of class,” instead everybody embraced it and took it up and gave their real creative talents to becoming very active managers of this Association, and they have all contributed a huge amount. And they have also done so with tremendous good cheer and fellowship.

At that very first meeting, not only had they had to do homework, but when they showed up for that first Board meeting, an electrical storm had completely knocked out power to Eastern Connecticut, which is, of course, where we were meeting. You may think of the usual inconveniences—no lights, no refrigeration—but what you may not realize is that hotel key cards are now also made electronically, which means if you do not have any electricity to run those machines, you cannot have a room either. Even with all these various problems, everybody just pitched in and made the best of it. We had an excellent meeting.

I would also like to thank all of the Committee Chairs. You have heard today what immense contributions these Committees are making, how important the work of these Committees is, and what is being accomplished in so many spheres to serve the maritime community. This is exactly what makes this organization shine. Because I have represented the Association, I have received the thanks for everything that you have done.

Of course, I owe a special thanks to my firm, Curtis, Mallet-Prevost, Colt & Mosle, which took me on in the midst of this, and they have yet to see whether or not I will produce some billable hours for them. Apart from that trust that I will eventually contribute something to the bottom line, they have given me support not only in every practical sense, but also in a more fundamentally valuable sense even more precious to me, which is that this work is valued. It's a firm that values people engaging in this kind of endeavor. It is that culture that has really made me feel like I'm finally home again in a professional context.

Not only has my firm given up my time; so has my family. It is not just a question of reducing the hours I spend with them. It is that I didn't go to my daughter's parents' weekends, which she took cheerfully and patiently and with love. It is, for example, the times my husband, Geoff, would occasionally like to have someone to go to the movies with him on Saturday. He has

[15336]

tolerated it tremendously well, again, with patience and love. My son Julian generally just sees my back as he's going up the stairs as I'm typing away on my computer, but again he's been so kind and tolerant. I have been really, really blessed with people who have given me selfless love, and I couldn't have done any of this without them.

Turning back to the Association, certainly I have special working relationships, special social friendships, with many members of this Association with whom I've worked particularly closely.

But I want to give my thanks to you, all of the members of this Association. It's you who have made me so very proud to be your representative. You shared my idea of the value of being volunteers. You think that what we do here is important. You do that with goodwill, with good cheer. It is that that gets the work done. It is that spirit of giving your time without compensation, because it is important.

What is more, that shared volunteer spirit creates an environment of friendship, goodwill, listening, making things work, taking difference, and turning it into richness as opposed to opposition. I cannot tell you how proud I am to have been representing an organization that is held in such high regard in so many circles and continues to build and build on that regard. I have had a front row seat at all of the wonderful things that this Association does, and I can assure you that other people are looking on, as well. It has been incredible to be in that position.

Finally, I would like to say a word of thanks to our younger members and also to give them a little piece of advice. In my letters welcoming new members, generally the last thing I say is that I hope that you will enjoy and find as satisfying your time in this Association as I have. It's not just a phrase. It's really, really true.

Get involved. Get the satisfactions that I have been getting by seeing that there is some work to be done and saying, you know, I think I can do that. If you take that advice, it may one day be you standing up here saying something very similar.

Thank you all very, very much for the incredible time that you have given me as your President. It has been a privilege and honor. Thank you. And with that I will turn the podium over to President Marwedel. You are all too kind. You do it all. Thank you.

[15337]

MR. MARWEDEL: Liz and I are like the boat owner. This is my happiest day, and it's Liz's happiest day.

She has kept our boat in great shape. And I use the term "boat", because I come from an area where thousand-foot vessels are called boats, not ships: the Great Lakes. For the past two years I've had the privilege of being First Vice-President and serving with Liz Burrell.

I do not speak of Liz as the first woman President of this Association, but as one of the best ones we've had. Liz is a scholar, an organizer, an excellent lawyer, and a doer. She has performed her duties with grace and efficiency.

I have often been amazed at the grasp of the details of the many diverse legal issues that come before the Association, as well as her ability to herd the many cats of this organization. Liz, you're going to be a very hard act to follow.

We do have something for you, and I deliberately left the bubble wrap on so that you can use this the next time you go skiing.

MS. BURRELL: Thank you. That was very thoughtful.

MR. MARWEDEL: This is a Certificate of Appreciation, and it reads:

"The Maritime Law Association of the United States presents this Testimonial of Appreciation to Lizabeth L. Burrell in recognition of her distinguished service as President during the years 2006–2008.

"The Association takes this means to recognize her able and successful leadership, her constructive efforts, and her outstanding contributions to the Maritime Law Association and to the field of maritime law."

MS. BURRELL: Thank you very much. That's beautiful. Thank you.

MR. MARWEDEL: Madam President, as an additional token of our appreciation and esteem, and on behalf of the MLA, I would like to present to you a gift that we have.

Maybe Pat can come over and help. We'll bring this out bit by bit by bit. I'm going to put this over here.

[15338]

MS. BURRELL: Yes, keep it away from me.

MR. MARWEDEL: I'm glad to see that your family is here so they can get this out of here.

MS. BURRELL: Oh, my goodness. It is beautiful.

MR. MARWEDEL: It's a Chelsea clock, a chronometer and a barometer. There's an inscription: "Elizabeth L. Burrell, President of the Maritime Law Association 2006–2008." We thought that the Chelsea clock would be especially meaningful for you.

MS. BURRELL: It is meaningful.

MR. MARWEDEL: We hope that the barometer gives you fair weather in the future, and the clock will help you in your firm with your billable time.

MS. BURRELL: Most welcome.

MR. MARWEDEL: Now I would like to say just a few personal remarks and then we can all get off to lunch.

In the back there, there is a young midshipman from the Merchant Marine Academy Class of 2009, I believe. Please stand up. Believe it or not, I looked something like that when I joined this Association. We hope to see you here sometime in the future.

I'm deeply honored to serve as President of this Association. I have been a member for many years and have been impressed by the men, and now woman, who have stood here before me.

There are so many people I want to thank for helping me on my voyage to this position. First of all, there is my first mate, Marilyn, sitting in the back, who has been my ship mate and pilot during this long voyage. She's always kept me on course. I also want to thank my partners, two of whom are here, Dennis Minichello and Rob Reeb. Without the support of my partners, who are my very good friends, this would not be possible.

There are many members who have helped me, inspired me, and set examples for me to follow. David Owen. David was the person who nomi-

[15339]

nated me to the Executive Committee before we became a corporation. Frank O'Brien. And I especially like Frank's approach to things. We were in Hawaii in 1986, and we were trying to get a Senator to come and speak before the organization, and we were given a whole list of requirements in terms of limousines and the class of ticket on the airplane, a suite, et cetera, plus compensation. When I brought all of this to the President he paused for a minute and he said, "Tell him to go to hell." There's Howard McCormack, Bill Dorsey, and the officers, directors and members I've worked with over the years.

Then there is my assistant, Terri Cooper, who keeps it all straight for me. She usually finds all my missing files right in front of me on my desk, and I understand will be getting a big information transfer from Liz's office from Maria, who has been a big help to us, as well.

I want to thank the members for electing the new Officers and Directors and for electing me to serve your interests. This is your Association and it is our purpose to meet your needs in an ever changing legal environment.

I think I've talked on enough. I want to thank all of you for being here, and call on Ken Volk.

MR. VOLK: As some of you may know or may not know, the privilege of making a motion to adjourn and also for nominations has always fallen to the most senior Past President attending a meeting. And so this morning when I came to the hall and I was approached by Warren and Liz, they told me today you're it. And this is my first time. So I was surprised and indeed shocked that I would have this honor.

It reminded me of what Satchel Paige said long ago: "Never look back because you might see who is catching up with you."

But it also gives me the opportunity to congratulate Liz Burrell, my good friend and former partner, upon the completion of her very successful term as President, and thank her for the outstanding leadership she has given us over the last two years.

And with that I move we adjourn.

MR. MARWEDEL: Do I have a second? All in favor? We are adjourned.

[15340]

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

The Committee held an informative meeting on the morning of April 30th 2008 at the premises of CNA / MOAC, for whose kind hospitality we are again most grateful. Some 40 members and guests were in attendance.

Gene George of Cleveland, Vice Chairman of the Committee, opened the meeting by presenting the Committee's Spring 2008 Newsletter. The lead article is by Bill Boeringer and Bill Milliken of Hayden & Milliken in Miami and was developed from the address that Bill Boeringer gave us in Fort Myers on "The Tripartite Relationship Among the Insurer, the Insured, and the Attorney." It looks at this from the point of view of various rules governing professional conduct arising primarily from three sources: the Restatement, the ABA Model Rules, and state bar rules governing attorneys.

We also have the usual crop of excellent case summaries, prepared largely by Gene, with help from Steve Rible. The cases reflect a continuing consideration of issues surrounding *uberrima fides* and disclosure and misrepresentation. Current and past issues of the Committee's newsletter can be found in the MLA document library and on the Committee's web page.

Gene went on to review continuing developments arising out of the 2005 Gulf hurricanes and the wind vs. water debate. He has accumulated quite a body of research at this point and we will look into posting it in written form on the Committee's home page.

The GA and Cargo Subcommittees had nothing material to report.

John Woods made a comprehensive report from the Hull and P&I Subcommittee, revisiting for our benefit various of the cases reported upon in the newsletter. He also advised that AIMU is currently reviewing the American Institute Hull Clauses with a view to implementing a handful of changes. The project is at the discussion stage, but the proposals that John described are very much of an evolutionary nature and seem unlikely to be the source of any controversy.

We briefly discussed an initiative reported from Hawaii earlier in the year to introduce marine insurance legislation based on the English Marine Insurance Act of 1906. We have been able to determine that the bill has not moved beyond the committee stage and that it is unlikely to do so. Committee members based in Hawaii will monitor the situation, and update us as necessary.

[15341]

We then turned to our guest speaker, Sam Senders of EPS Settlements, who spoke on “The Business of Structured Settlements”. Sam had prepared a comprehensive presentation which can now be found on the Committee’s home page and it generated a substantial amount of discussion from the floor. Sam emphasized the usefulness of future periodic payments as a tool in settlement negotiations and described the numerous considerations that surround the various forms of structure.

This presentation, again, can be found on the Committee home page.

We were lucky to have Mike Bird, President of the Canadian MLA, join us for our meeting. He drew our attention to impending changes to the Insurance Companies Act in Canada, which are likely to bring ocean marine insurance within the scope of federal regulation for the first time. Mike has generously offered to provide further details to anyone who cares to contact him on this point.

We introduced a new feature to the Committee meeting, bringing forward news of members absent and present and concluded by announcing the appointment of Andrew Wilson of New Orleans as the new Committee Secretary, a development we greatly welcome.

Respectfully submitted,
Jonathan S. Spencer,
Chair

**FORMAL REPORT OF THE COMMITTEE ON MARITIME
TORTS AND CASUALTIES**

**Current Developments on Forum Selection Clauses
in Jones Act Cases**

Background

The enforceability of forum selection clauses was first addressed by the United States Supreme Court in *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972) and since that time, the Supreme Court has consistently held forum-selection clauses in admiralty cases presumptively valid. *Vimar Seguros y Reaseguros, S.A. v. M/V SKY REEFER*, 515 U.S. 528 (1995)(enforcing foreign arbitration clause); *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991)(upholding dismissal of Washington residents’ case in Washington fed-

eral district court based on forum-selection clause on Florida-based cruise line ticket); *Bremen*, 407 U.S. at 15. *See also Francisco v. STOLT ACHIEVEMENT M/T*, 293 F.3d 270, 2002 (5th Cir. 2002)(granting motion to dismiss based on enforceable arbitration clause in seaman’s employment contract).

In *Bremen*, the U.S. Supreme Court held that “the forum clause should control absent a strong showing that it be set aside.” *Bremen*, 407 U.S. at 15. The Supreme Court also stated that forum selection clauses in commercial maritime contracts are “prima facie valid and should be enforced unless enforcement is shown by the resisting party to be ‘unreasonable’ under the circumstances.” *Id.* at 10.

In *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991), the Supreme Court expanded its holding in *Bremen* to include maritime contracts involving private American citizens. In *Carnival Cruise*, relying on *Bremen*, the Supreme Court held that the forum selection clause was enforceable despite the fact that the tickets were nonrefundable and the forum selection clause was not the product of bargaining. *See id.* at 595.

The Fifth Circuit expanded *Bremen* and *Carnival Cruise* to include forum selection clauses in seamen’s employment contracts in *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216 (5th Cir. 1998).

“[A] valid forum selection clause is given controlling weight in all but most exceptional cases.” *Marinechance Shipping*, 143 F.3d at 220 n. 16; and, *Calix-Chacon v. Global Int’l Marine, Inc.*, 493 F.3d 507, 510–13 (5th Cir. 2007) To overcome the presumption that a forum-selection clause in a maritime contract is enforceable, the party challenging the clause must make a “strong showing” that the clause is unreasonable. *Carnival Cruise Lines*, 499 U.S. at 595; *Bremen*, 407 U.S. at 15. The burden of proving unreasonableness is a heavy one, carried only by clearly showing that the clause results from fraud or overreaching, that it violates a strong public policy, or that enforcement of the clause deprives the plaintiff of his day in court. *Bremen*, 407 U.S. at 12–13, 15; *see also Spradlin v. Lear Siegler Management Services Co., Inc.*, 926 F.2d 865 (9th Cir. 1990)(enforcing forum-selection clause in employment contract requiring resolution of dispute between Delaware corporation and California resident in Saudi Arabia); *Tisdale v. Shell Oil Co.*, 723 F.Supp. 653, 656–57 (M.D. Ala. 1987)(illustrating that return to Saudi Arabia by American citizen for adjudication despite potential of arrest there in unrelated matter was insufficient showing of hardship to overcome forum-selection clause).

A forum selection clause in a non-negotiated form contract is valid so long as it is not fundamentally unfair. *See Carnival Cruise Lines*, 499 U.S. at 595; *Holeman v. National Business Institute, Inc.*, 94 S.W.3d 91, 99 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). The inquiry into fundamental fairness of a non-negotiated form contract involves the examination of such facts as (1) whether the forum was selected to discourage legitimate claims; (2) whether the consent to the forum was obtained by fraud or overreaching; (3) whether the party resisting enforcement had adequate notice of the forum selection clause; and, (4) whether the party retained the option of rejecting the contract with impunity following notice of the forum selection clause. *See Carnival Cruise Lines*, 499 U.S. at 595; *Holeman*, 94 S.W.3d at 99.

Maritime employers that have workers from different states seeking employment from them have legitimate interests in limiting the fora in which they potentially could be subject to suit to those, for example, where the worker was employed at the time of the alleged incident and where the employer has its base of operations. *See Carnival Cruise Lines*, 499 U.S. at 594.

However, when asked to enforce a forum selection clause against a Jones Act seaman in *Boutte v. Cenac Towing, Inc.*, Federal District Judge Samuel Kent held that the 1949 U.S. Supreme Court per curiam decision in *Boyd v. Grand Truck Western Railroad Co.*, 338 U.S. 263 (1949) (which is a U.S. Supreme Court decision regarding a FELA action) invalidated forum selection agreements between American seamen and American companies asserting Jones Act claims. 346 F.Supp.2d 922 (S.D. Tex. 2004). Specifically, Judge Kent held that forum selection agreements are invalid in Jones Act cases because the “Jones Act specifically incorporates FELA, and forum selection clauses are impermissible under FELA.” *Boutte*, 346 F.Supp.2d at 929. Similarly, in *Nunez*, the Alaska Supreme Court found a forum selection agreement involving a Jones Act seaman void based on the unenforceability of forum selection agreements under FELA. *Nunez v. American Seafoods*, 52 P.3d 720, 722–723 (Ala. 2002). Both the *Boutte* and *Nunez* courts assumed that the FELA venue provisions applied to Jones Act cases.

Great Lakes Dredge & Dock Company, LLC v. Larrisquitu, 2007 A.M.C. 2141 (S.D. Tex. 2007)

In *Larrisquitu*, Great Lakes filed a declaratory judgment action seeking enforcement of a forum selection agreement signed as a condition of employment by a domestic Jones Act seaman. The seaman employee had previously filed suit under the Jones Act and general maritime law in Texas state court

in violation of the forum selection agreement. Great Lakes sought enforcement of the forum selection agreement in both federal and Texas state courts.

In finding that forum selection agreements were enforceable in Jones Act cases, Federal District Judge Lee Rosenthal sought to reconcile *Boutte v. Cenac Towing Inc.*, 346 F.Supp.2d 992 (S.D. Tex. 2004) and *Nunez v. American Seafoods*, 52 P.3d 720 (Ala. 2002) with a recent Fifth Circuit case involving venue in a Jones Act Case, *Terrebonne v. K-Sea Transportation Corp.*, 477 F.3d 271 (5th Cir. 2007). See *Larrisquitu*, 2007 WL 2330187 at *18–22. While *Terrebonne* did not specifically address the enforceability of a forum selection agreement with a Jones Act seaman, the Fifth Circuit did hold that the FELA venue provision and accompanying case law did not apply to Jones Act suits. *Terrebonne*, 477 F.3d at 282.

The plaintiff in *Larrisquitu* argued that forum selection clauses were unenforceable in domestic Jones Act Seaman cases. In support of this proposition, *Larrisquitu* expressly relied on *Boutte* and *Nunez* which, again, expressly relied on *Boyd v. Grand Truck Western Railroad Co.*

In response to the *Larrisquitu*'s claims, Judge Rosenthal noted:

Since *Boutte* and *Nunez* were decided, the Fifth Circuit has decided *Terrebonne*, 477 F.3d 271, which undercuts a significant part of the basis for their holdings. In *Terrebonne*, a domestic seaman suffered a hernia injury while working aboard the defendant's ship. The parties partially settled the personal injury claim. As part of the settlement, the plaintiff agreed to arbitrate any remaining disputes, including any Jones Act claims, in New York. After a recurrence of his hernia, the plaintiff filed a Jones Act suit in a Texas federal court. In response to a motion to dismiss, the plaintiff argued that the arbitration clause was unenforceable in part because under *Boyd*, forum-selection clauses are unenforceable in Jones Act suits. *Id.* at 275. On appeal, the Fifth Circuit held that, contrary to the assumption the court made in *Boutte*, the FELA's venue provision and accompanying case law (including the case law prohibiting forum-selection clauses) did not apply to Jones Act suits. Because the Jones Act has its own venue provision, which states that "[a]n action under this section shall be brought in the judicial district in which the employer resides or the employer's principal office is located," 46 U.S.C. § 30104(b), the Fifth Circuit found that the Jones Act cannot be interpreted as incorporating FELA's venue provision.

Larrisquitu, 2007 A.M.C. at 2165.

The *Larrisquitu* plaintiff also argued that *Terrebonne* was distinguishable from the instant case because it dealt with an arbitration clause rather than a forum selection agreement. However, Judge Rosenthal noted that,

[t]his distinction was important to the Fifth Circuit in its analysis of the arguments as to the arbitration agreement's validity under the Federal Arbitration Act (FAA). The FAA exempts from compelled judicial enforcement arbitration agreements in contracts for the employment of seamen, railroad employees, and other workers engaged in interstate commerce. See *Terrebonne*, 477 F.3d at 278. Because the arbitration agreement was in a settlement agreement, rather than in an employment contract, the Fifth Circuit found that the FAA did not apply to make the arbitration agreement unenforceable. *Id.* at 280. This argument does not apply to a forum-selection clause, which is not subject to the FAA.

Larrisquitu, 2007 A.M.C. at 2166.

The fact that *Terrebonne* involved an arbitration rather than a forum-selection agreement does not affect the clear holding that the FELA venue provisions do not apply in Jones Act cases, as the courts in *Boutte* and *Nunez* assumed. *Id.* at *20. "*Terrebonne* eliminates the statutory basis for the result in *Boutte* and *Nunez* that the FELA venue provisions are incorporated into the Jones Act and make forum-selection clauses in Jones Act cases unenforceable." *Id.*

2008 Amendments to the Jones Act

In January 2008, the 110th Congress amended the Jones Act to remove the venue provision contained therein. Currently, the amended 46 U.S.C.A. § 30104 (2008) is as follows:

A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

On first blush, this amendment appears to make the FELA venue provisions applicable to Jones Act cases and undercuts the above-discussed holdings in both *Terrebonne* and *Larrisquitu*. However, in reviewing the legislative

history of Congress' repeal of the Jones Act venue provision, it is clear that Congress' intent was to clarify that an "action [under the Jones Act] may be brought wherever the seaman's employer does business." H.R. Doc. No. 110-437, at 5. Congress specifically noted that this repeal did not overturn the United States Supreme Court's holding in *Pure Oil v. Suarez*, 384 U.S. 202 (1966). The foregoing is potentially significant because in *Pure Oil*, the Supreme Court looked to 28 U.S.C. § 1391 (c), rather than FELA, in finding that the Jones Act venue provision was as broad as the general venue provision in § 1391. *Id.* In its recent repeal of the venue provision, Congress explicitly noted in the Congressional Report that "the prior law regarding venue, including the holding of *Pure Oil v. Suarez*, 384 U.S. 202 (1966) and cases following it, remains in effect . . ." H.R. Doc. No. 110-437, at 5. Accordingly, it can be argued that it was Congress' intent that venue in Jones Act cases is governed by the general venue provision (28 U.S.C. § 1391) rather than FELA. The Supreme Court did not discuss FELA venue provisions in its review of the impact of the general venue provision upon the Jones Act. That said, it must be noted that the Supreme Court could have reached the identical result in *Pure Oil* by applying the FELA venue provisions. *See Pure Oil*, 346 F.2d 890, 893 (5th Cir. 1965).

Robert L. Klawetter
Christina K. Schovajsa

The Supreme Court

On January 27, 2008 the U.S. Supreme Court heard argument on the *EXXON VALDEZ* case of 1989. At issue was the upholding by the Ninth Circuit of a \$2.5 billion punitive damage award, an amount reduced from the trial damages. Apparently the issue of whether the accident had a limit set by the pre-1990 Water Pollution Act was not before the Court, because it was not argued on trial. The consensus of the attorneys involved seemed to be that maritime punitive damages are recoverable, involving an appraisal of the 1818 case of *The Amiable Nancy*. There, the crew of a privateer looted a neutral ship during the War of 1812. Members of the crew could be liable for punitive damages but not the absent owners, unless they ratified the action. Another decision may be that reasonable limits must be set. At about the date of argument, Exxon reported earnings of at least \$40 billion. MLA lawyers were on briefs on both sides of the argument.

Another Punitive Damages Case

Punitive damages were allowed if proven in the death of a longshoreman in state waters. *Wheelings v. Seatrade Groningen, B.V.*, 516 F. Supp. 2d

[15347]

488 (E.D. Pa. 2007), relying on *Sea-Land Services v. Gaudet*, 414 U.S. 573 (1974) (loss of society allowed in longshoreman's death) and *Rutherford v. Mallard Bay Drilling*, 2001 A.M.C. 2813 (E.D. La. 2000).

A Vessel In Navigation

A Jones Act case requires a vessel in navigation. The Fifth Circuit ruled that an oil drilling rig, afloat but still under construction was not such a vessel. *Cain v. Transocean Offshore USA*, 518 F.3d 395 (5th Cir. 2008).

A vessel undergoing sea trials made no warranty of seaworthiness but it was a vessel in navigation when actually being used for transportation. *Crawford v. Electric Boat Corp.* 515 F.Supp.2d 282 (D. Ct. 2007) (infection on unsanitary vessel claimed).

Jones Act and Unseaworthiness

The Sixth Circuit had a case with a very good analysis of the basis of a crew member's claims. For the Jones Act, once negligence is proved, in whole or in part, there is a reduced standard of causation. The owner must provide a safe workplace and cure dangers which are known or should have been known. Even the misuse of properly functioning equipment may render a vessel unseaworthy. *Taylor v. TECO Barge Line, Inc.*, 517 F.3d 372 (6th Cir. 2008) (exposure to coal tar in sealant coating caused injury). The award, although high, was within the range of proof.

Evidence in a Seaman's Case

Evidence concerning a crew or member's use of alcohol and non-prescription drugs was held relevant. The employee's claims opened up the issue of reasons for his medical treatment. A new trial was ordered. *Peake v. Chevron Shipping Co.*, 245 Fed.Appx. 680 (9th Cir. 2007).

Seaman's Release

The court recited the usual rules on a seaman's release: adequacy, availability of legal advice and not necessarily the adequacy of consideration. The burden is on the shipowner. *Steverson v. GlobalSantaFe Corp.*, 508 F.3d 300 (5th Cir. 2007).

Wage Claims

In a bankruptcy situation, a wage claim pre-existing bankruptcy was given priority where an arrest for the benefit of the bankrupt estate came later. *Admiral Cruise Services, Inc., v. M/V ST. TROPEZ*, 524 F.Supp.2d 1378 (S.D. Fla. 2007).

A dispute between a crew member and his former maritime employer over unpaid wages gave rise to admiralty jurisdiction. A fight had developed over the matter on another vessel. *Gruver v. Lesman Fisheries*, 489 F.3d 978 (9th Cir. 2007).

Maritime Accident—Tort Claims Act Applied

An army soldier was injured on a boat rented from an army recreational facility. He sued the manufacturer which impleaded the U.S. Since it was an off-duty injury, suit was allowed under the FTCA. One would expect a suit under the Public Vessels Act or Suits in Admiralty Act. *Regan v. Starcraft Marine, LLC*, 524 F.3d 627 (5th Cir. 2008).

Cruise Line Cases

Based on the tickets, a jury trial was denied. *Leslie v. Carnival Corp.*, 2008 A.M.C. 380 (Fla. Dist. Ct. App. 2008).

The dram shop law was applied against a vessel owner for an assault after a passenger disembarked. But a negligence claim was denied against the ship owner. Also, a school sponsor of the trip could be liable for negligence but not any dram shop coverage because the school did not serve liquor. *Mazurkiewicz v. Queen of Hearts Cruises, Inc.*, 2007 WL 4591674 (E.D.N.Y. 2007).

Cruise Line—Medical Malpractice

Another case denying a cruise line owner liability for a doctor's malpractice is *Hesterly v. Royal Caribbean Cruises, Ltd.*, 515 F.Supp.2d 1278 (S.D. Fla. 2007). The court also held that there was no duty to provide a doctor. Only a district court case in California and an appellate court in Illinois are the cases most likely to be cited in favor of vicarious liability. *Nietes v. American President Lines, Ltd.*, 188 F.Supp. 219 (N.D. Cal. 1959); *Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E.2d 80 (Ill. App. 1st Dist. 2005).

[15349]

Denial of Class Action Certification Not Immediately Appealable in Admiralty

The Fifth Circuit held that a denial was not an appealable interlocutory decision since the plaintiffs could pursue their claims individually. *In re: Ingram Barge Co.*, 517 F.3d 246 (5th Cir. 2008).

Damages

In a case involving collision of pleasure boats, comparative fault applies. A future pain and suffering award would be reduced to present value, but there was a failure of proof on lost earnings. No prejudgment interest was allowed for the pain and suffering award despite the holdings of *McCran v. U.S. Lines, Inc.*, 803 F.2d 771 (2d Cir. 1986) and Independent *Bulk Transp. v. MORANIA ABACO*, 676 F.2d 23 (2d. Cir. 1982), which allowed this interest on lost earnings claims. *In re Delmarine, Inc.* 520 F.Supp.2d 422 (E.D.N.Y. 2007).

Death in State Waters

Matheny v. Tennessee Valley Authority, 523 F.Supp.2d 697 (M.D. Tenn. 2007), has a number of interesting areas covered. A man died when a TVA tug boat swamped his fishing boat. A state death statute was applied with pain and suffering. The discretionary function and limitation of liability defenses were denied. The duties of defendant and causation were defined. Loss of society (here called loss of consortium) was allowed. Last clear chance, superseding cause, and the Pennsylvania Rule were discussed as well as negligent entrustment and supervision.

Property Damages

It is thought that economic damages are not usually allowed in property damage cases. In *Norwegian Bulk Transport A/S v. International Marine Terminals Partnership*, 520 F.3d 409 (5th Cir. 2008), the Fifth Circuit denied economic damages to a charterer but there is a suggestion that an owner may recover since it is based on a direct contract.

The International Safety Management Code (ISM), CG Regulations and OSHA Regulations

A discussion of how these regulations might apply in a seaman's injury case was dealt with in *Johnson v. Horizon Lines*, 520 F.Supp.2d 524 (S.D.N.Y. 2007). Here there was an open hatch causing an accident. Judge Haight held

[15350]

that a CG regulation involving guards was not applicable. An ISM provision was held too general to form the basis of per se negligence or preclude proof of comparative fault. The ISM provision requires safe practices, a safe work environment and implementing safeguards against all identifiable risks.

Venue in a Jones Act Case and Contract Venue Clauses

In *Terrebonne v. K-Sea Transp. Corp.*, 477 F.3d 271 (5th Cir. 2007), the court in a Jones Act case upheld a post-accident release with an arbitration provision. The FELA venue provision was not applied.

Tolling of a Statute of Limitations Defense

In a cruise case where a state court action was timely commenced but dismissed on venue grounds, equitable tolling was allowed in a later suit in the federal court. *Booth v. Carnival Corp.*, 510 F.Supp.2d 985, 2008 A.M.C. 58 (11th Cir. 2008).

Forum Non Conveniens

A limitation of liability action was dismissed on forum non conveniens grounds. But dismissal is not warranted if the alternative forum would dismiss on grounds of statute of limitations unless there was a purposeful delay. *In re Compania Naviera Joanna, S.A.*, 531 F.Supp.2d 680 (D.S.C. 2007).

National Jurisdiction

A foreign owner that makes many voyages to U.S. ports but may not “do business” in any one port, is subject to “national jurisdiction” under Rule 4(k)(2) of the Federal Rules. A recent case where a ship came to many U.S. ports held that there would not be jurisdiction over an owner where the ship’s charterer directed where the ship was to go. *Porina v. Marward Shipping Co. Ltd*, 2008 A.M.C. 913 (2d Cir. 2008). The case distinguished a Sixth Circuit case where the owner specially outfitted its vessel for service in the Great Lakes and jurisdiction was upheld. *Fortis Corporate Ins. v. Viken Ship Mgt.* 450 F.3d 214 (6th Cir. 2006).

A district court presumably would have upheld jurisdiction against a charterer to whom the owner ceded wide control. *Mutualidad Seguros v. M/V LUBER*, 1999 A.M.C. 824 (S.D.N.Y. 1998).

Limitation of Liability

The owner of a tugboat sought summary judgment on its right to limit its liability for damages arising out of an allision between a barge under tow and a bridge owned or operated by Amtrak. Amtrak opposed the motion, and argued that the captain was incompetent thus rendering the tugboat unseaworthy. The court granted summary judgment after finding that the Captain was properly licensed, properly trained, and had a satisfactory safety record. The court rejected Amtrak's allegation that his negligence at the time of the accident (failure to post a look out in poor visibility) was evidence of incompetence for the purposes of limitation of liability. Furthermore, limitation was not barred because of the owner's failure to have a written policy as to operation in poor visibility, when the evidence showed that the crew had been properly trained and instructed in this regard. Summary judgment was therefore granted in favor of the tug owner who was permitted to limit its liability. *In re Seawolf Limitation Proceedings*, 2008 A.M.C. 131 (S.D.N.Y. 2007)

Following a collision between the world's largest hopper dredge and an MSC vessel in Chinese waters, the owners of the MSC vessel brought a limitation action in Taiwan. Thereafter, the claimants instituted four Rule B attachment actions against other MSC chartered vessels, including one that was found in the District of South Carolina. The owners of the MSC vessel then filed a limitation action in order to prevent further attachments, and posted \$110 million in security. Claims in excess of \$325 million were filed. The court then granted petitioner's motion to dismiss on the basis of forum non conveniens after finding that China was an available and more convenient forum. In so doing, the court recognized that a limitation plaintiff could not seek a dismissal for lack of personal jurisdiction. However, this doctrine did not prevent the enforcement of a forum selection clause or the dismissal on forum non conveniens grounds. *Compania Naviera Joanna S.A. Limitation Proceedings*, 531 F.Supp.2d 680, 2007 A.M.C. 2898 (D. S.C. 2007)

The District Court for the Eastern District of Louisiana confirms the fact that claims of the government for removal costs under the Wreck Act are not subject to limitation of liability. *In re: Southern Scrap Metal Co. L.L.C.*, 2007 A.M.C. 2612 (E.D. La. 2007)

The Second Circuit affirmed the lower court's denial of the city's petition to limit its liability for claims arising out of the Staten Island Ferry crash of 2003. The denial was premised on the city's failure to meet the minimum standard of care by failing to enforce any policy that would address the potential sudden incapacitation of the pilot. As the reader may recall, the city

had a policy that required two pilots in the wheelhouse at all times, which shows that they certainly perceived the risk. The court applied the formula developed by Judge Learned Hand in *United States v. Carroll Towing Co.*, whereby one assesses the relative burden of adequate precautions against the gravity of the injury and the probability that the injury will occur. After acknowledging that the analysis was not an exact science, the court looked at industry practice and Coast Guard regulations that called for two crewmembers in or near the helm onboard vessels carrying passengers for hire. Although these regulations were not applicable to the Staten Island ferry, which is free, the court did use them as a guide to finding that the ferry failed to meet the standard of care, and that such negligence was within the privity and knowledge of the city's director of ferry operations. Thus, limitation was properly denied. *In re City of New York*, 2008 WL 817945 (2d Cir. 2008).

A tug, pushing two barges up the Columbia River, allegedly embarrassed the navigation of a passing passenger vessel, causing her to run aground. The owners of the tugboat sought to exclude the value of the two barges under tow from the limitation fund, claiming that they were merely passive instruments of navigation tied to the offending vessel. The claimant sought to have the value of the barges included, claiming that the wind pushed them across the channel, forcing the passenger vessel to ground. Citing Supreme Court precedent from 1959, the court held that only the tug could be held responsible for the incident, and therefore the value of the barges need not be included in the limitation fund. *In re S.D.S. Lumber Limitation Proceedings*, 2007 A.M.C. 2835 (D. Or. 2007)

Following a collision, the limitation plaintiff posted a letter of undertaking by the P&I Club in an amount equal to the scrap value of the vessel, which following the collision sat partially submerged in approximately 30 feet of water. She was later salvaged and repaired, and the claimants sought to increase the amount of security and also asked the court to order that a bond be posted in lieu of the stipulation filed by the P&I insurer. The court agreed to increase the security following an appraisal of the vessel, finding that the proper valuation was the "market value of the vessel as it then exists, less the cost of repairs." The scrap value was only appropriate when the cost of the repairs would exceed the repaired value of the ship. The court declined to rule on the form of security until after the appraisal, stating only that form of security must conform to the applicable local and federal rules. *Man Ferrostaal, Inc. v. M/V VERTIGO*, 2007 A.M.C. 2618 (S.D.N.Y. 2007).

A casino barge that was permanently moored is not a vessel, and therefore the Court has no admiralty jurisdiction and must dismiss the owner's petition to limit its liability for damages caused when the barge ripped free of its moor-

[15353]

ings during Hurricane Katrina. It is interesting to note that the barge did not float down river but rather was blown over the flood waters and across a highway before crashing into a hotel. One questions whether the result would have been different if the barge had floated down river upon breaking free. *In re Silver Slipper Casino Venture, LLC*, 2008 A.M.C. 962 (5th Cir. 2007)

Respectfully submitted,
John C. Scalia,
Chair

**FORMAL REPORT OF THE COMMITTEE ON
PRACTICE AND PROCEDURE**

At its May 2, 2008 General Meeting, on a motion made by the Committee on Practice and Procedure, the MLA adopted a new set of Model Local Admiralty Rules:

MODEL LOCAL ADMIRALTY RULES 2008

**UNITED STATES DISTRICT COURT
FOR THE [IF ANY] DISTRICT OF [STATE]**

Local Admiralty Rules

Local Admiralty Rule A—Authority and Scope

LAR A(1) *Authority*. The local admiralty rules of the United States District Court for the [if any] District of [State] (the Court) are promulgated by a majority of the judges as authorized by and subject to the limitations of Federal Rule of Civil Procedure 83.

LAR A(2) *Scope*. The local admiralty rules apply only to civil actions that are governed by Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims. All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rule, the local admiralty rule governs.

LAR A(3) *Citation*. The local admiralty rules may be cited by the letters “LAR” and the capital letter and numbers in parentheses that appear at the beginning of each section. The capital letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

LAR A(4) *Definitions*. As used in the local admiralty rules, the word “Rule” followed by a numeral, e.g., Rule 12, means a Federal Rule of Civil Procedure; the word “Rule” followed by a capital letter, e.g., Rule C, means a Supplemental Rule for Certain Admiralty and Maritime Claims; the word “Court” means the District Court that issues these Local Admiralty Rules; the term “judicial officer” means a United States District Judge or a United States Magistrate Judge; the word “Clerk” means the Clerk of the District Court and includes deputy clerks of court; the word “Marshal” means the United States Marshal and includes deputy marshals; the word “keeper” means any person or entity appointed by the Marshal to take physical custody of and maintain the vessel or other property under arrest or attachment; and the term “substitute custodian” means the individual who or entity that, upon motion and order of the Court, assumes the duties of the Marshal or keeper with respect to the vessel or other property that is arrested or attached.

Local Admiralty Rule B—Maritime Attachment and Garnishment

LAR B(1) *Use of State Procedures*. When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Rules or the Supplemental Rules, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

Local Admiralty Rule (C)—Actions In Rem: Special Provisions

LAR C(1) *Intangible Property*. The summons issued pursuant to Rule C(3)(c) shall direct the person having control of intangible property to show cause no later than 10 days after service why the intangible property should not be delivered to the Court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the Court. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may deliver or pay over to the Marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff’s claim. If such delivery or payment is made, the person served is excused from the duty to show cause. A person who asserts a right of possession or ownership may show cause as provided in Rule C(6)(a) why the property should not be delivered to the Court.

[15355]

LAR C(2) *Publication of Notice of Action and Arrest*. The notice required by Rule C(4) shall be published once in a newspaper named in the local rules, and plaintiff's attorney shall file with the Clerk a copy of the notice as it was published. The notice shall contain:

- (a) The court, title, and number of the action;
- (b) The date of the arrest;
- (c) The identity of the property arrested;
- (d) The name, address, and telephone number of the attorney for plaintiff;
- (e) A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Rule C(6)(a) must be filed with the Clerk and served on the attorney for plaintiff within 10 days after publication;
- (f) A statement that an answer to the complaint must be filed and served within 30 days after publication, and that otherwise, default may be entered and condemnation ordered;
- (g) A statement that applications for intervention under Rule 24 by persons claiming maritime liens or other interests shall be filed within the time fixed by the Court; and
- (h) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

LAR C(3). *Default In Actions In Rem*

- (a) Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the Court that notice of the action and arrest of the property has been given
 - (1) by publication as required in LAR C(2),
 - (2) by service upon the Marshal, keeper, substitute custodian, master, or other person having custody of the property, and
 - (3) by mailing notice to every other person who has not appeared in the action and is known to have an interest in the property.

[15356]

(b) Persons with Recorded Interests

- (1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership.
- (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.
- (3) If the defendant property is of such character that there exists a governmental registry of property interests and/or security interests, the plaintiff must attempt to notify all persons named in the records of each such registry.

LAR C(4) *Entry of Default and Default Judgment*. After the time for filing an answer has expired, the plaintiff may move for entry of default under Rule 55(a). The Court will enter default upon showing that:

- (a) Notice has been given as required by LAR C(3)(a), and
- (b) Notice has been attempted as required by LAR (3)(b) where appropriate, and
- (c) The time to answer by claimants of ownership to or possession of the property has expired, and
- (d) No answer has been filed or no one has appeared to defend on behalf of the property.

The plaintiff may move for judgment under Rule 55(b) at any time after default has been entered.

**Local Admiralty Rule (D)—Possessory,
Petitory, and Partition Actions**

LAR D(1) *Return Date*. In a possessory action under Rule D, a judicial officer may order that the statement of right or interest and answer be filed on a date earlier than 20 days after arrest. The order may also set the date for expedited hearing of the action.

**Local Admiralty Rule (E)—Actions in Rem and Quasi In Rem:
General Provisions**

LAR E(1) *Itemized Demand for Judgment*. The demand for judgment in every complaint filed under Rule B or Rule C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Rule E(5)(a) may be based upon these allegations.

LAR E(2) *Salvage Action Complaints*. In an action for a salvage reward, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salvaged, and the dollar amount of the reward claimed.

LAR E(3) *Verification of Pleadings*. Every complaint in Rule B, C, and D actions shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

LAR E(4) *Review by Judicial Officer*. Unless otherwise required by the judicial officer, the review of complaints and papers called for by Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order to the Clerk which, upon signature by the judicial officer, will direct the arrest, attachment or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or plaintiff's attorney under Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts that establish the exigent circumstances.

LAR E(5) *Return of Service*. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal. A person specially appointed by the Court under Rules B or C who has served process of maritime attachment and garnishment or a warrant of arrest that seized property shall promptly file a verified return showing the name of the individual on whom the process or warrant was served, the identity of the person or entity on whom service was made, the documents served, the manner in which service was completed (e.g., personal delivery), and the address, date, and time of service.

LAR E(6) *Property in Possession of United States Officer*. When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

LAR E(7) *Security for Costs and Expenses*. In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs and expenses with the Clerk pursuant to Rule E(2)(b). Unless otherwise ordered, the amount of security shall be \$500. The party so ordered shall post the security within 5 days after the order is entered. A party who fails to post security when due may not participate further in the proceedings except by order of Court. A party may move for an order increasing the amount of security for costs and expenses.

LAR E(8) *Adversary Hearing*. The adversary hearing following arrest or attachment or garnishment that is called for in Rule E(4)(f) shall be conducted by a judicial officer promptly. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

LAR E(9) *Appraisal*. An order for appraisal of property so that security may be given or altered will be entered upon motion. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give 1 business day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The appraiser's fee normally will be paid by the moving party, but it is a taxable cost of the action.

[15359]

LAR E(10) *Security Deposit for Seizure of Vessels*. The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit \$ [amount] with the Marshal to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance, and insurance. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time, at the Marshal's request, to cover estimated expenses. A party who fails to advance such additional sums may not participate further in the proceedings except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to release the vessel if additional sums are not advanced within 3 business days after the request.

LAR E(11) *Intervenors' Claims*.

(a) Presentation of Claim. When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the Marshal or substitute custodian, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint and obtain a warrant of arrest, and not by filing an original complaint, unless otherwise ordered by a judicial officer. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for seizure of a vessel as required by LAR E(11).

(b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to any party that has previously advanced funds to cover the expenses of the Marshal, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If a party plaintiff permits the vacation of an arrest, attachment, or garnishment, the remaining plaintiffs will share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims and for the duration of the Marshal's custody because of each claim.

LAR E(12) *Custody of Property*

(a) Safekeeping of Property. When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near

[15360]

the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. Notice of the application to appoint a substitute custodian must be given to all parties and the Marshal. The application must show the name of the proposed substitute custodian, the location of the vessel during the period of custody, and the proposed insurance coverage.

(b) Insurance. The Marshal may procure insurance to protect the Marshal, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property, in performing protective services, and in maintaining the Court's custody. The party who applies for arrest or attachment shall reimburse the Marshal for premiums paid for the insurance and shall be an added insured on the policy. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the Court.

(c) Cargo Handling, Repairs, and Movement of the Vessel

(1) [Alternate I] Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless otherwise ordered by the Court. No repairs to or movement of the vessel shall take place without order of the Court. The applicant for an order shall give notice to the Marshal and to all parties of record.

(2) [Alternate II] Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of Court. The applicant for an order shall give notice to the Marshal and to all parties of record.

(3) If an applicant shows adequate insurance to indemnify the Marshal for liability, the Court may order the Marshal to permit cargo handling, repairs, or movement of the vessel, cargo, or other property. The costs and expenses of such activities shall be borne as ordered by the Court. Any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal, keeper, or substitute custodian and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the Marshal, before issuing the order to change arrangements.

[15361]

(d) Claims by Suppliers for Payment of Charges. A person who has furnished supplies or services to a vessel, cargo, or other property in custody of the Court, who has not been paid, and who claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

LAR E(13) *Sale of Property*

(a) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published at least [number] times during the period of time consisting of [days] prior to the day of the sale.

(b) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale:

(1) The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is \$1,000 or less.

(2) If the bid exceeds \$1,000, the bidder shall immediately pay the Marshal a deposit of at least \$1,000 or 10% of the bid, whichever is greater, and shall pay the balance within 3 days.

(3) If an objection to the sale is filed within the period in LAR E(13)(b)(2), the bidder is excused from paying the balance of the purchase price until 3 days after the sale is confirmed.

(4) Payment shall be made in cash, by certified check, or by cashier's check.

(c) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(d) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default, and the judicial officer may accept the second highest bid or may arrange a new sale.

[15362]

The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the Marshal because of the default, and the balance shall be retained in the registry of the Court awaiting its order.

(e) Report of Sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court setting forth the notice given; the fact of the sale; the date of the sale; the names, addresses, and bid amounts of the bidders; the price obtained; and any other pertinent information.

(f) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the Clerk within 3 court days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least 7 calendar days. Payment to the Marshal shall be in cash, certified check, or cashier's check. The Court shall hold a hearing on the confirmation of the sale.

(g) Confirmation of Sale. If no objection to the sale has been filed, the sale shall be confirmed by order of the Court no sooner than 3 days after the sale and no later than 5 days after the sale. The Marshal shall transfer title to the purchaser upon the order of the Court.

(h) Disposition of Deposits

(1) If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

LAR E(14). *Presentation of Matters*. If the judge to whom a case has been assigned is not readily available, any matter under the Local Admiralty Rules may be presented to any other judge in the district without reassigning the case.

Local Admiralty Rule (F)—Limitation of Liability

LAR F(1) *Security for Costs*. The amount of security for costs under Rule F(1) shall be \$1,000, and security for costs may be combined with security for value and interest unless otherwise ordered.

LAR F(2) *Order of Proof at Trial*. In an action where vessel interests seek to limit their liability, the damage claimants shall offer their proof first, whether the right to limit arises as a claim or as a defense.

Respectfully submitted,
Andrew J. Goldstein,
Chair

**REPORT OF THE COMMITTEE ON STEVEDORES, MARINE
TERMINALS, AND VESSEL SERVICES**

The meeting was called to order at 9:30 a.m. on May 1, 2008 at the offices of Jones, Hirsch, Connors & Bull, P.C. Nash Bilisoly of the Vandevanter firm provided the Committee with a Longshore Act case update on the following topics:

1. Longshore Act v. Jones Act. Section 2(3)(G) Seaman Exclusion. *Jarrett v. Director*, OWCP, 234 Fed.Appx. 714 (9th Cir. 2007). ALJ ruled and BRB affirmed that claimant was an excluded crew member and not eligible for benefits under the Act. Indeed, claimant had previously settled under the Jones Act for the same injury, *Jarrett v. Navatek, Ltd.*, 38 BRBS 91 (ALJ 2004). Claimant petitioned for review.

In an abbreviated decision, the Ninth Circuit noted that claimant worked as a covered “ship maintenance person” over a period of four years, but for “only a few months directly prior to the accident” he was working on board a vessel, when he spent a “large percentage of his time at sea.” While claimant had “hoped that he would eventually transition to a position as a deck hand or assistant engineer on board a vessel,” court reaffirmed prior decisions that Longshore Act does not exclude, “probable or expectant seaman but seamen in being.” Under the apparent rationale that the claimant was not a seaman “in being,” although he had been at sea for several months, the Ninth Circuit granted petition for review and remanded for reward under the Longshore Act.

2. Compensation lien. No Section 33 lien is allowed on a legal malpractice action based on lawyer losing third-party liability case. *ITT Federal Services Corp. v. Montano*, 474 F.3d 32 (1st Cir. 2007).

3. Second Injury Fund. Section 8(f) relief is available where first and second injury occurred in the employment with the same employer. *Electric Burke v. DeMartino*, 41 BRBS 45 (2d Cir. 2007).

4. Rejection of Second Injury Fund relief. The medical opinion submitted by the employer to establish a material and substantially greater disability resulting from the combined effects of the two injuries must be fully explained. Where not explained, 8(f) will be denied. *Newport News Shipbuilding v. Director*, 2007 App. LEXIS 26358 (4th Cir. November 14, 2007).

5. Section 928(b) attorneys' fees. Exchange of parties' position letters to OWCP was equivalent to an informal conference. In this case, the Fourth Circuit procedurally loosened the Edwards test. *Newport News Shipbuilding v. Director*, 477 F.3d 123 (4th Cir. 2707).

6. Section 933(g). An unapproved asbestosis third-party settlement does not bar a claim for compensation based on work-related COPD, even if part of the lung impairment is due to asbestosis. *Newport News Shipbuilding v. Director*, 245 Fed.Appx. 249 (4th Cir. 2007).

7. Liable employer. In a traumatic injury case, earlier employer must show an actual aggravation by the later employer to relieve itself from compensation liability. Testimony that a type of work would or could have caused an aggravation is not enough. *Berry Bros. General Contractors, Inc. v. Director*, 2008 WL 59523 (5th Cir. 2008).

This discussion was followed by a brief presentation by the Vice-Chairman of the Committee, Anthony Filiato, on regulatory issues under the Longshore Act. Following this presentation, Doug Matthews reported on two cases that will be addressed by the Fifth and Seventh Circuits on issues involving attorneys' fees under Section 928 of the Longshore Act. The *Andrepoint* case, reported by the BRB, is to be addressed by the Fifth Circuit. In this case, the BRB agreed with the employer that Section 28(a) and Section 28(b) should be strictly applied and where, under 28(a), the employer had made payment of compensation within 30 days of notice of the filing of a formal claim and under Section 28(b) the employer accepted the recommendation of the claims examiner, the employer was not responsible for the claimant's fees. The other matter, *Furrow v. Jeffboat*, before the Seventh Circuit, involves the award of an hourly rate, based upon general market rates in Connecticut, for a case arising in Indiana. The issue is whether the rate should be one that is local to the market in which the claim arose.

[15365]

Nash Bilisoly also provided the Committee with a brief update on the implementation of TWIC's and that it is expected that the required enrollment dates for most ports will be pushed back to April 15, 2009.

Next, JoAnne Zawitoski reported on the decision of the U.S. District Court for the District of Maryland in the matter of *American Roll On Roll Off Carrier, LLC v. P&O Ports of Baltimore, Inc.* This is an interesting case dealing with issues of the per-package limitation stated in a bill of lading, the definition of a shipping unit, and questions of indemnity between the stevedore and shipper. The decision will be posted on the Committee's website.

Doug Matthews then reported on the decision of the Fifth Circuit in a 905(b) matter entitled *Leonal Robinson v. Orient Marine, et al.*, a copy of which is to be posted on the Committee's website. In this matter, the Fifth Circuit reversed the district court's denial of summary judgment filed by the time charterer for an injury occurring to a longshoreman who claimed that the stowage of cargo, which he was discharging, was hazardous. The district court had granted the shipowner's motion for summary judgment on the basis of the Supreme Court decisions in *Scindia* and *Howlett* but denied a similar summary judgment filed by the time charterer, as it felt that language in Clause 8 of the time charter created a greater liability for the charterer.

The Committee then received a report from the Chairman of the Subcommittee on Freight Forwarders and Custom House Brokers, David Loh. He provides the following report on three cases.

Warner Lambert Co. v. LEP Profit Int'l., 517 F.3d 679 (3d Cir. 2008). Dispute arose from the crash of a FedEx cargo flight on July 31, 1997 at Newark Int'l. Airport. Cargo owner filed suit against three (3) parties: FedEx, Lep Profit, and Lep Japan. FedEx was the air carrier. Lep Profit and Lep Japan were found by the district court to be indirect air carriers. Both Lep Profit and Lep Japan appealed to the Third Circuit seeking a legal determination that they were in fact freight forwarders. Third Circuit upheld the district court's determination that Lep Profit and Lep Japan were indirect air carriers and therefore shared liability with FedEx for the cargo loss.

This decision is also significant in that it affirms the "agreed stopping place" doctrine as a means of piercing the limitation of liability provision under the Warsaw Convention. Interestingly, this case has little if any precedential value on the limitation issue because the U.S. has ratified the Hague Protocol and MP4.

[15366]

OneBeacon Ins. Co. v. Haas Industries, Inc., 2008 U.S. Dist. LEXIS 33824 (N.D. Cal. April 24, 2008). Dispute arose from the short delivery of electronic equipment during interstate carriage. Both sides moved for partial summary judgment on the enforceability of the trucker's limitation of liability of \$0.50 per pound. The court found that there was an issue of fact that prevented a final ruling of the enforceability of the limitation.

However, this case held that the fair opportunity doctrine (a/k/a the released value doctrine) may not be used to overturn a limitation when the cargo owner has purchased its insurance coverage. "Why would the cargo owner ever agree to pay a higher freight rate in exchange for a higher release value if the cargo owner has already purchased cargo insurance?"

The "reasonableness" of a \$0.50 limitation of liability was found to be an issue of fact. Testimony of trucker's comptroller that \$0.50 per pound limitation was the industry norm was not enough.

American Home Assurance Co. a/s/o Oce Printing Systems GmbH v. Kuehne & Nagel v. Alliance Air and Polar Air Cargo, 2008 U.S. Dist. LEXIS (S.D.N.Y. March 26, 2008). Dispute arises from physical damage to equipment which was damaged during air carriage from Germany to Illinois. Plaintiff cargo owner filed suit against freight forwarder, Kuehne & Nagel ("K&N"), because K&N had issued an air waybill. K&N in turn filed third party complaint against those air carriers that had physical custody of the cargo. However, those third party defendants were able to rely upon an air waybill which was dated earlier than the K&N air waybill. For international air carriage, there is a two-year time bar. Because plaintiff waited until the last minute to file suit, K&N was unable to file its third party complaint within the two-year time bar against Alliance Air and Polar Air Cargo. Alliance Air and Polar Air moved to dismiss the third party complaint and the court agreed. As a result, K&N will have to defend against plaintiff's claims without any contribution or indemnity from Alliance Air and Polar Air Cargo.

Recommendation? K&N should have asked for an extension of suit time from Alliance Air and Polar Air Cargo. Private extensions of suit time are not specifically authorized by WC, Hague, or MP4, but there are no cases that prohibit such agreements.

Respectfully submitted,
Douglas P. Matthews,
Chair

[15367]

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

Held at
Amelia Island Plantation
Amelia Island, Florida
on
March 8, 2008
9:00 A.M.

The March 8, 2008 meeting was called to order by President Lizabeth L. Burrell at 9:00 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
Thomas S. Rue, Immediate Past President

The following directors also were present:

Joe E. Basenberg	Donald J. Kennedy
Forrest Booth	John D. Kimball
Dennis L. Bryant	Janet Wessler Marshall
David J. Farrell, Jr.	Stephen V. Rible
Grady S. Hurley	C. Kent Roberts
Allan R. Kelley	John M. Ryan

James F. Moseley, Gordon D. Schreck, and Robert S. Glenn, Jr. also attended the meeting.

SECRETARY'S REPORT

Secretary James W. Bartlett, III reported that the Fall 2007 PROCEEDINGS are in the hands of the MLA Administrator, Robin Becker, and they will be going out by bulk mail shortly. He also reported that the notice of the Spring 2008 Meeting and Dinner, the dinner reservation form, the hotel reservation form, and the flyer for the May 2 meeting have gone out to the membership by a blast e-mail and are posted on the MLA website.

[15368]

Secretary Bartlett also reported that he had distributed the minutes of the October 25, 2007 meeting of the Board of Directors, and there were no corrections. Upon motion duly made and seconded, the minutes of the October 25, 2007 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the October 25, 2007 meeting of the Board of Directors are in the Fall 2007 PROCEEDINGS.

TREASURER'S REPORT

Treasurer Robert G. Clyne presented the Treasurer's report for the three months ended October 31, 2007. He reported that cash and investments total over \$400,000.00 and that over 90 percent of dues for 2007 have been collected.

Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted. A copy of the Treasurer's formal report for the three months ended October 31, 2007 will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

In the absence of Membership Secretary Philip A. Berns, Secretary Bartlett presented the Membership Secretary's Report prepared by Mr. Berns.

Mr. Bartlett reported that 21 applications were received for Associate membership. Upon motion duly made and seconded, the applications of the following 21 Associate members were approved unanimously:

Thomas Saunders Berkley of Norfolk, Virginia
Benjamin A. Bomrind of New York, New York
Michael S. Budelmann of Seattle, Washington
Michael Fischer of Costa Mesa, California
Steven L. Foremaster of Las Vegas, Nevada
Billy J. Frey of Houston, Texas
Matthew C. Guy of New Orleans, Louisiana
Kelly Haas of Galveston, Texas
Michael A. Khouri of Louisville, Kentucky
Ji Woon Kim of New York, New York
Harmony I. Loube of New York, New York
C. Robert Murray of Ft. Lauderdale, Florida
John C. Nichols of Alexandria, Virginia
Charmagne A. Padua of Jersey City, New Jersey
Robert William Phelan of New York, New York

[15369]

Kelly M. Pretoroti of Baltimore, Maryland
Luis G. Raven of Panama City, Republic of Panama
Aaron K. Rives of New Orleans, Louisiana
J. R. Ruble of Berkeley Heights, New Jersey
Rick A. Steinberg of Hackensack, New Jersey
Michael A. Timpone of New York, New York

Five applications were received for Law Student membership. Upon motion duly made and seconded, the application of the following Law Student members were approved unanimously:

Jeremy Binkley of the University of Houston
Thomas Dunlap of the University of Baltimore
Jonah M. Levine of NOVA Southwestern University
Wes Young of Texas Tech School of Law
Anthony J. Salerno, Jr. of Georgetown University Law Center

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

John R. Martzell of New Orleans, Louisiana
The Hon. Paul H. Roney of St. Petersburg, Florida
Charles L. Trowbridge of New York, New York
Robert C. Blumberg of Washington, D.C.
George D'Amato of New York, New York
William R.P. Hogan of New York, New York

After the admission of 21 Associate members, the total membership of the MLA is 3,053.

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 reported that each member of this Subcommittee has been assigned certain Standing Committees with which each Subcommittee member will coordinate. This does not, however, diminish the role of the Board liaisons in coordinating with each Committee.

[15370]

The Committee on Regulation of Vessel Operations and the Committee on Marine Ecology and Maritime Criminal Law will be holding a joint meeting in Washington, D.C. on Tuesday, April 29, 2008.

President Burrell reported that Arthur F. Meade, III of Crowley Maritime Corporation had accepted her appointment as Chair of the In-House Counsel Committee.

Finance

Treasurer Clyne reported that the Finance Subcommittee is exploring subjects such as possible dues increases, life memberships, and the MLA's investment account.

Membership

In the absence of Membership Secretary Berns, no report was given.

Website

First Vice President Warren J. Marwedel reported on various enhancements to the MLA website. These will include automatic assistance when a member forgets his or her password and the identification of the sender of e-mails distributed through the website. Some other administrative improvements were suggested by Robin Becker. In addition, it has been suggested by Membership Secretary Berns that the membership application forms be modified so that they can be filled out on the website and then e-mailed. First Vice President Marwedel made a motion that the administrative changes be implemented and that the membership forms be modified after the membership forms are examined to see if they can be simplified and reduced in number. After this motion was seconded, it was passed unanimously.

DISCUSSION ITEMS AND REPORTS

Board Liaison Reports

Each Board liaison reported on the status of the Standing Committees and each Committee's preparation for the Spring 2008 Meeting. It was suggested that each Committee's meeting agenda should include teleconferencing details for those members who will not be able to attend the meeting in person.

[15371]

City/Regional Luncheons

David J. Farrell, Jr. reported that he has organized another luncheon in New England, this time at the Roger Williams Law School in Rhode Island on April 4, 2008. The school is sponsoring the lunch and the topic will be Short Sea Shipping. He estimates that 40 to 50 people will attend.

President Burrell reported that Bruce A. King has organized an MLA luncheon in Seattle.

Coordination with the United States Coast Guard

President Burrell reported that Admiral Baumgartner, Judge Advocate General and Chief Counsel of the United States Coast Guard, is interested in creating a forum between the Coast Guard and the MLA in which concerns of common interest can be discussed. President Burrell stated that this is an extraordinary opportunity to serve our industry. The President will be appointing a special committee to serve on this forum.

President Burrell reported that Thomas L. Willis had retired as Director of the Coast Guard National Vessel Documentation Center. The MLA gave him a certificate of appreciation that was presented to him by Steve Johnson at the retirement ceremony.

ABA House of Delegates

James F. Moseley, the MLA delegate to the ABA House of Delegates, reported on developments of interest in the ABA. He reported that Hank White, the Executive Director of the ABA, who is also an MLA member, is reorganizing the ABA infrastructure.

President Burrell reported that the ABA has asked the MLA to recommend an MLA member for nomination to the Government and Public Sector Committee of the ABA. President Burrell intends to ask Rand Pixa if he would accept that nomination.

Continuing Legal Education

President Burrell reported that Betsy Bundy, Vice Chair of the Continuing Legal Education Committee, has successfully negotiated with the New York Continuing Legal Education Board, and the MLA is now authorized to award CLE credit for teleconferencing attendance at approved Committee meetings.

[15372]

Fall 2008 Arrangements Committee

Forrest Booth reported on the Fall 2008 Meeting, which will be held in Long Beach, California. Robert J. Zapf is the Chair and William H. Collier, Jr. is the Vice Chair for this meeting. It will be held at the Long Beach Hyatt November 5–8, 2008 and will follow a New York format. On Wednesday, November 5, there will be a boat trip around the Port of Los Angeles-Long Beach.

Fall 2009 Meeting

Various alternatives for the Fall 2009 Meeting were discussed by the Board.

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

Immediate Past President Thomas S. Rue reported that he and President Burrell attended a meeting with Joseph Ludwiczak of the Liberian Shipowners Council, Joseph Cox of the American Chamber of Shipping, Peter Hinchliffe of the International Chamber of Shipping, Stacey H. Mitchell, Chief of the Environmental Crimes Section of the Department of Justice, and Joseph Poux and Richard Udell of the Department of Justice. We are trying to work toward some kind of workshop in September, and Mr. Rue is communicating with Mr. Udell in that regard.

Title 46 Codification

Dennis L. Bryant, Chair of the Ad Hoc Committee on the Codification of Title 46, reported that this process is almost entirely completed, and he recommended that this Special Committee be disbanded. Upon motion duly made and seconded, this Special Committee was disbanded, with the Board of Directors giving special thanks to Mr. Bryant for his diligent chairmanship of this Committee for seven years.

Certification

Forrest Booth reported that the efforts to certify admiralty as a specialty in California unfortunately are still alive. President Burrell wrote a letter opposing this concept, as did many others.

President Burrell reported that she continues to be frustrated in her attempts to communicate with the New York State Bar Association in connection with certification efforts in that state.

Short Sea Shipping

David J. Farrell, Jr. and C. Kent Roberts reported that this Committee will be meeting in New York on May 1, 2008, with a CLE presentation.

Amicus Requests and Participation

As approved by the Board of Directors, the MLA has agreed to file *amicus* briefs in support of petitions for writ of certiorari to the Supreme Court of the United States in *National Casualty Co. v. Lockheed Martin Corp.* and *Magnolia Industrial Fabricators v. Devon Louisiana Corp.*

Subpoena and Rule 45 Requests

The MLA received a Subpoena and Rule 45 Requests in connection with the Katrina Canal Breaches Consolidated Litigation in the United States District Court for the Eastern District of Louisiana. As approved by the Board, Grady S. Hurley and Janet Weschler Marshall filed a Motion for Protective Order. (This motion was granted on March 19, 2008 and the Subpoena was quashed.)

International Activities

Second Vice President Bonner presented a report on the Seventh Session of the Expert Working Group on Abandonment and Liability and Compensation for Claims for Death and Personal Injury, which took place in Geneva during the prior week. The United States delegation consisted of Captain Charles Michel of the Coast Guard, Lieutenant Ward of the Coast Guard, Doug Stevenson of Seamen's Church Institute, William Eglinton of the Seafarers' International Union, and Mr. Bonner. Mr. Bonner praised Captain Michel for his effort and interest in this subject.

The Board of Directors thanks Carter, Ledyard & Milburn for its assistance in preparing a response to the CMI Questionnaire on Promotion of Quality Shipping by Non-Technical Measures.

The UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea was completed during a two-week meeting of the Working Group III in Vienna in January 2008. There will be nothing for the MLA to address in this regard until probably the Fall 2008 Meeting.

[15374]

The CMI Executive Council will be meeting in New York April 28–May 1, 2008, and the members of the Council will be joining the Board of Directors at its luncheon on May 1, 2008.

Future Officer and Board Meetings

- A. MLA Spring Meeting, New York, New York—April 30–May 2, 2008
- B. MLA Fall Meeting, Long Beach, California—November 5–8, 2008

There being no further business to come before the Board of Directors, the meeting was adjourned at 11:38 A.M.

Respectfully submitted,
James W. Bartlett, III,
Secretary

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

Held in the Hughes Room
Association of the Bar of the City of New York
42 West 44th Street
New York, New York
on
May 1, 2008
9:30 A.M.

The May 1, 2008 meeting was called to order by President Elizabeth 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
Thomas S. Rue, Immediate Past President

The following directors also were present:

Joe E. Basenberg
Forrest Booth

Donald J. Kennedy
John D. Kimball

[15375]

Dennis L. Bryant
David J. Farrell, Jr.
Grady S. Hurley
Allan R. Kelley

Janet Wessler Marshall
Stephen V. Rible
C. Kent Roberts
John M. Ryan

Membership Secretary Philip A. Berns presented his report to the Board by telephone.

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the March 8, 2008 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the March 8, 2008 meeting of the Board of Directors will be included in the Spring 2008 PROCEEDINGS.

TREASURER'S REPORT

Treasurer Robert G. Clyne presented the Treasurer's report for the three months ended January 31, 2008. He reported that cash and investments total \$338,059.77 and that approximately 75% of dues for 2008 have been collected.

The venue for the Spring 2009 Dinner is being considered, with Pier 60 and the Marriott Marquis the possibilities.

Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted. A copy of the Treasurer's formal report for the three months ended January 31, 2008 will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns presented his report by speaker phone.

Mr. Berns reported that the Proctor Committee recommended the elevation of eight Associate members to Proctor member status:

Wm. Ryan Acomb of New Orleans, Louisiana
Julius H. Hines of Charleston, South Carolina
Neil Klein of Costa Mesa, California
Jessica L. McClellan of Savannah, Georgia
Dabney Welsh Pettus of Corpus Christi, Texas

[15376]

Sterling J. Stires of Rancho Santa Fe, California
Michelle Otero Valdes of Miami, Florida
Thomas M. Wynne of Richfield, Ohio

Upon motion made by Mr. Berns, which was duly seconded, the elevation of these members to Proctor status was approved unanimously.

Mr. Berns reported that 25 applications were received for Associate membership. Upon motion duly made and seconded, the applications of the following 25 Associate members were approved unanimously:

Dean W. Baker of New Haven, Connecticut
Murray A. Bloom of Washington, D.C.
Asher Brooks Chancey of Philadelphia, Pennsylvania
Steven A. Clark of New Haven, Connecticut
John Townsend Cooper of Sullivans Island, South Carolina
Gerald L. Creighton, Jr. of Rockland, New Jersey
Peter Caro Dee of New York, New York
Boriana Farrar of New York, New York
Christine A. Fazio of New York, New York
Christopher H. Frick of New York, New York
David C. Grigsby of New Haven, Connecticut
Paul Durand Hale of New Orleans, Louisiana
Timothy W. Hassinger of Mandeville, California
Jeremy Alan Herschaft of New Orleans, Louisiana
Marisa G. Huber of San Francisco, California
Alan C. Kelhofer of New York, New York
Pierre S. Krouse of Houston, Texas
Amy Bartlett Lovseth of Jersey City, New Jersey
Theodore H. Lucas of St. Louis, Missouri
Larry G. Main of Washington, D.C.
Andrew Nicholas Mescolotto of Fort Lauderdale, Florida
Bradley Mozée of San Ramon, California
Michele L. Trowbridge of New Orleans, Louisiana
Chad E. Willits of Cincinnati, Ohio
Chelsea Yuan of San Francisco, California

One application for reinstatement as a Proctor member was received from David R. Hornig. Upon motion duly made and seconded, the application for reinstatement of David R. Hornig as a Proctor member was approved unanimously.

[15377]

Membership Secretary Berns reported that five applicants have been nominated by the Non-Lawyer Committee for membership in the Association. Upon motion duly made and seconded, the applications of the following five persons were approved for Non-Lawyer membership:

Kevin Ennis of Armonk, New York
John L. Judice of New York, New York
Charles A. Mannino of Eatontown, New Jersey
Lorna V. Rosquites of Boston, Massachusetts
Michael Wilson of Houston, Texas.

One application for Academic membership was received for Professor R. Randall Bridwell. Upon motion duly made and seconded, the application of Professor R. Randall Bridwell for Academic membership was approved unanimously.

Eleven applications were received for Law Student membership. Upon motion duly made and seconded, the applications of the following Law Student members were approved unanimously:

David R. Boyajian of Tulane University School of Law
Guillermo Antonio Cancio of Tulane University School of Law
Candace L. Cooper of Tulane University School of Law
Justin Crawford of Rutgers University School of Law, Newark
Patricia M. Dickerson of Hamline University School of Law
Guy Manchuk of Tulane University School of Law
Jason Wayne Power of Berry University School of Law
Thomas Richardson of Rutgers University School of Law, Camden
Angelique P. So of Tulane University School of Law
Lazlo Szabo of Rutgers University School of Law, Newark
Kevin M. Whiteley of Washington University School of Law

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

John R. Martzell of New Orleans, Louisiana
The Hon. Paul H. Rooney of St. Petersburg, Florida
Charles L. Trowbridge of New York, New York
Robert C. Blumberg of Washington, D.C.
George G. D'Amato of New York, New York
Richard B. Kydd of Boston, Massachusetts

[15378]

After the admission of 25 Associate members, the admission of five Non-Lawyer members, the reinstatement of one Proctor member, and the admission of one Academic member, the total membership of the MLA is 3,060. There are also 16 Law Student members.

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 reported that a joint meeting of the Committees on Regulation of Vessel Operations and Marine Ecology and Maritime Criminal Law was held in Washington, D.C. on Tuesday, April 29, 2008. These same two committees also held a joint meeting in New York on Wednesday, April 30.

The Subcommittee is addressing a continuing issue with agendas and call-in numbers and is looking into the possibility of establishing a common call-in number.

Finance

Treasurer Clyne reported that the Finance Subcommittee is addressing the possibility of a dues increase for 2009. The Subcommittee is also looking into investment alternatives for the investment account.

Membership

Membership Secretary Berns recommended that this Subcommittee be tasked with reviewing the requirements needed to qualify for Proctor membership and Non-Lawyer membership. The Subcommittee was directed to so proceed.

Website

First Vice-President Warren J. Marwedel reported that the enhancements to the MLA website are temporarily on hold due to a change of personnel at Intercounsel.

DISCUSSION ITEMS AND REPORTS

Fall 2008 Arrangements Committee

Robert J. Zapf and William H. Collier, Jr., Co-Chairs of the Committee, reported that the Fall 2008 Meeting will be held in Long Beach, California, at the Long Beach Hyatt, on November 5–8, 2008. Committee meetings will run from Thursday, November 6, to Friday, November 7, with the General Meeting being held on Saturday morning, November 8. Preceding the Committee meetings, there will be a CLE tour of the Port of Long Beach/Los Angeles by charter boat, including an interim bus tour of the Maersk Terminal. On Thursday evening, November 6, there will be a hosted reception at The Aquarium of the Pacific. The traditional MLA reception and dinner will be held at the Long Beach Hyatt on Friday evening. A block of rooms have been reserved at the Hyatt from Tuesday evening, November 4, through Saturday evening, November 8, inclusive.

Board Liaison Reports

Several Board liaisons discussed issues relating to getting Committee agendas out six weeks in advance of the Committee meetings. It was suggested that a working agenda should be circulated and posted on the website six weeks in advance of the meetings with a final agenda sent out three to four weeks prior to the meetings. It was suggested that this task could be delegated to the Committee secretary. All of the agendas should be accessible on the MLA website Events Calendar.

City/Regional Luncheons

Joe E. Basenberg reported that there will be a social event in early June in Mobile, Alabama. He also complimented the MLA Administrator, Robin Becker, for her assistance in facilitating communications concerning this event.

David J. Farrell, Jr. reported that a luncheon meeting was held at the Roger Williams Law School in Rhode Island on April 4, 2008. Approximately 50 people attended, and the topic discussed was short sea shipping.

Coast Guard Forum

The United States Coast Guard and the MLA have created a forum to facilitate communications between the two organizations. President Burrell has created a special committee that will liaise with the Standing Committees and the membership in order to monitor and convey concerns of MLA

[15380]

members and the many industry interests they represent and to provide feedback on Coast Guard initiatives and other agency actions. The members of this special committee are Warren J. Marwedel, Christopher O. Davis, Bruce A. King, M. Hamilton Whitman, Jr., and Lizabeth L. Burrell.

Fisheries

David J. Farrell, Jr. reported that a proposed provision of the Coast Guard Authorization Act for Fiscal Year 2008, S.1892, specifically Section 505, would facilitate the financing of fishing enterprises by clarifying that maritime liens will not attach to limited access system permits, partially implementing resolutions adopted by the MLA at its General Meeting in November 2004. President Burrell has written letters to Senator Ted Stevens, Senator Daniel K. Inouye, and Senator Maria Cantwell supporting the passage of Section 505.

Marine Financing

C. Kent Roberts reported that Bruce A. King, Chair of the Committee on Marine Financing, met with Congressional staff on April 29 to propose statutes that would permit filing with the Coast Guard of a bareboat charter of a vessel and would permit the documentation of a vessel and the filing of a preferred mortgage at the beginning of vessel construction. These proposals were approved by the Board of Directors by e-mail vote prior to this meeting.

Practice and Procedure

Secretary Bartlett reported that the Committee on Practice and Procedure will be proposing a resolution at the General Meeting on May 2, 2008 for the approval and adoption of revised MLA Model Local Admiralty Rules.

Meeting Site Selection Committee

First Vice President Marwedel reported that various alternatives are being considered for the locations of the Fall 2009 and 2010 Meetings.

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

Immediate Past President Thomas S. Rue reported that there has been little progress with respect to the MLA initiative to bring industry and government representatives together for some kind of workshop in September. He is expecting shortly to receive a letter from Richard Udell of the Department of Justice concerning this subject.

Certification

Forrest Booth reported that there is no news with respect to the efforts by some parties to certify admiralty as a specialty in California.

Short Sea Shipping

David J. Farrell, Jr. reported that the *Ad Hoc* Committee on Short Sea Shipping will meet for the first time this afternoon and will feature Rand Pixa of MARAD as a guest speaker. In addition, CLE papers will be presented by C. Kent Roberts, H. Clayton Cook, Jr., and David J. Farrell, Jr.

Amicus Requests and Participation

The MLA filed *amicus* briefs in support of petitions for writ of certiorari in two cases before the Supreme Court of the United States, in *National Casualty Co. v. Lockheed Martin Corp.* and *Magnolia Industrial Fabricators v. Devon Louisiana Corp.* Certiorari was denied in the National Casualty case, and the petition in *Magnolia* is still pending. In addition, argument in the *Con-sub* case, in which the MLA filed an *amicus* brief, will take place before the United States Court of Appeals for the Second Circuit on May 15, 2008.

Subpoena and Rule 45 Requests

A Subpoena and Rule 45 Requests directed to the MLA were quashed by way of a Motion for Protective Order filed in the United States District Court for the Eastern District of Louisiana. An opinion was issued by the U.S. Magistrate Judge in granting the Motion that may prove valuable if similar requests are received in the future.

U.N. Convention on Independent Guarantees and Stand By Letters of Credit

The Board received a written report from Robert J. Zapf, who had been requested by President Burrell to serve as an observer in telephone meetings and conferences of the Committee to Implement the United Nations Convention on Independent Guarantees and Stand By Letters of Credit. This convention is of interest to maritime practitioners, in that it would apply to independent guarantees or stand by letters of credit negotiated and adopted in connection with the release of ships or other property seized in accordance with the Supplemental Rules. Mr. Zapf reported that the Committee has con-

[15382]

cluded that “the adoption of the Convention by the United States will cause little change in American law.”

UNCITRAL Draft Convention

The UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea will go for signature in September. It will be before the United States Senate in the early Fall, and it is hoped that it will be quickly adopted. The position of the MLA could be very important in this process.

Presidential Activities

President Burrell will speak for the legal profession at the Average Adjusters Dinner in London on May 8.

The Canadian Maritime Law Association has invited the MLA President to attend its meeting in Vancouver this summer.

Future Officer and Board Meetings

- A. MLA Board Meeting, Kings Point, New York—August 8–9, 2008
- B. MLA Fall Meeting, Long Beach Hyatt, Long Beach, California—November 5–8, 2008.

There being no further business to come before the Board of Directors, the meeting was adjourned at 11:17 A.M.

Respectfully submitted,
James W. Bartlett, III,
Secretary