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May 7, 2010

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING — MAY 7, 2010

PRESENT:

WARREN J. MARWEDEL
PATRICK J. BONNER
ROBERT B. PARRISH
HAROLD K. WATSON
ROBERT G. CLYNE
DAVID J. FARRELL, JR.
LIZABETH L. BURRELL

And the following 194 members and guests:

William Ryan Acomb	Forrest Booth
Julia M. Adams	Lawrence B. Brennan
Stephen A. Agus	James L. Brockmeyer
Olaf Aprans	Julia R. Brouhard
Draughn B.W. Arbona	Charles D. Brown
Paul B. Arenas	Christopher D. Buck
Frank A. Atcheson	Lucienne C. Bulow
Anthony Barker	Robert W. Burger
Francis J. Barry, Jr.	Lauren Burk
James W. Bartlett, III	Paul E. Calvesbert
Joe E. Basenberg	Thomas M. Canevari
W. Richmond Beevers	Christopher E. Carey
William E. Bell	William D. Carey
Thomas S. Berkley	Donald G. Cassels
Richard C. Binzley	James L. Chapman, IV
Manolo Rodriguez Bird	Minseo Choi
Michael C. Black	Peter D. Clark
Jorge F. Blasini	Thomas E. Clinton
Samuel P. Blatchley	Robert G. Clyne
Katharina Brekke Powers	Mark T. Coberly

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William R. Connor, III
James Patrick Cooney
Michael E. Crowley
Edward Dangler
Martin Davies
Christopher O. Davis
A. Robert Degen
Han Deny
Vincent M. De Orchis
Christopher H. Dillon
Susan M. Dorgan
William R. Dorsey, III
Robert N. Dunn
Stephanie A. Espinoza
Don T. Evans, Jr.
Anthony R. Filiato
Robert B. Fisher, Jr.
Daniel S. Foley
Vincent J. Foley
Professor Robert Force
Lars Forsberg
Peter F. Frost
Gene B. George
Alexander M. Giles
Geoffrey J. Ginos
Grady S. Hurley
Carol Galat Hurst
Bradley A. Jackson
Aileen M. Jenner
John Paul Jones
Graham Joplin
Lawrence Kahn
Eric Kaufman – Cohen
Kimbly A. Kearney
Marshall P. Keating
Allan R. Kelley
Donald J. Kennedy
Robert L. Klawetter
Jean E. Knudsen

Lynn L. Krieger
Alfred J. Kuffler
Kevin J. LaVie
Dwight LeBlanc
Edward LeBreton
Richard M. Leslie
Raymond T. Letulle
John T. Lillis, Jr.
Geoffrey A. Losee
Henry C. Lucas, III
Carl E. Lundin
Christopher S. Mann
Janet W. Marshall
David W. Martowski
Jessica Link Martyn
Robert K. Marzik
Raymond L. Massey
Michael McCauley
John Hay McConnell
Marion E. McDaniel, Jr.
Daniel G. McDermott
Peter A. McLaughlan
Arthur F. Mead III
Hon. Gray Miller
Dennis Minichello
James F. Moseley
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Don P. Murnane, Jr.
Thomas J. Muzyka
Justin T. Nastro
Francis X. Nolan III
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George W. Nowell
Robert P. O'Brien
Cathy O'Connell
Kevin G. O'Donovan
Michael D. O'Keefe
W. Sean O'Neil
Michael A. Orlando

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Richard H. Ottinger
Stephen M. Ouellette
William J. Pallas
Armand M. Pare, Jr.
Roland Paxton
Norman A. Peloquin, II
Nathaniel G.W. Pieper
Edward J. Powers
Daniel W. Raab
Edward C. Radzik
Lisa Reeves
Richard J. Reisert
Stephen V. Rible
William J. Riviere
Edwin D. Robb
C. Kent Roberts
James L. Ross
Thomas S. Rue
James E. Ryan
John M. Ryan
Michael J. Ryan
William P. Ryan
Alan G. Sampson
John P. Sandercock
Charles E. Schmidt
Christina K. Schovajsa
Gordon D. Schreck
Janis G. Schulmeisters
Pamela Schultz
James T. Shirley, Jr.
Douglas J. Shoemaker
David F. Sipple
David W. Skeen

David S. Smith
Kevin Beauchamp Smith
Steven L. Snell
Jonathan S. Spencer
Steven M. Stancliff
Norman M. Stockman
William T. Storz
Norman C. Sullivan, Jr.
David H. Sump
Michael L. Swain
Richard Taburteau
Paul F. Tecklenburg
Kevin J. Thornton
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Michelle Otero Valdes
Alan Van Praag
John P. Vayda
Michael Vingen
Kenneth H. Volk
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David R. Walker
Kevin P. Walters
Daniel R. Warman
Deborah C. Waters
James R. Watkins
William H. (Sandy) Welte
James F. Whitehead
M. Hamilton Whitman, Jr.
Thomas E. Willoughby
Daniel Wooster
Pamela Zarhign
JoAnne Zawitowski
Marc Zlomek

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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING
NEW YORK, NEW YORK
MAY 7, 2010

PROCEEDINGS

MR. MARWEDEL: Good morning. I'd like to get the meeting started. I want to welcome everybody to our May annual meeting.

I'd like to introduce a few guests that I see in the audience. I think Jeremy Bolger is here, President of the Canadian Maritime Law Association. I just saw him. Nigel Frawley is here, with the CMI. Peter Cullen, he's the past president of the Canadian Maritime Law Association. Captain Fred Kenney, whom you've seen and heard all week, and I want to mention that he helped put on a seminar in Washington, D.C. on Tuesday and came up here on Wednesday to participate, back to Washington, participated on Thursday via telephone making presentations, and he's back here today, and I ask yourself how many of you would have done all of that. Thank you very much, Captain.

(Applause)

MR. MARWEDEL: John Tsatsas is here. He is President of the London Maritime Arbitration Association. I think Anne Hopkins is here from AMC. There's Anne. Welcome. And I believe Austin Dooley is here, President of the SMA. He said he was going to be here.

If I've missed anybody, I apologize. You're all important people here.

Calvin Lederer, who is the acting chief legal officer for the Coast Guard and JAG. He's kind of combined Admiral Baumgartner's responsibilities with those that he had. Welcome. Thanks again for the participation of your people at our various committee meetings. We really appreciate it.

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Mr. Secretary, may we have your report? Hal Watson.

MR. WATSON: Thank you, Mr. President.

First I'd like to give a couple of housekeeping details. If you haven't signed in, signed the blue cards on the tables outside in the hall, please do so, so we know who's here. Secondly, please turn your cell phones to off or silent, which I just realized that I had neglected to do, which I'll be doing. And finally, if you're going to be speaking, hand a business card to the court reporter so she can identify you in the Proceedings.

Regarding the court reporter, I want to acknowledge our reporter today, Marie Bauer, being provided by Tom Crites International, in Savannah, at no charge to the Association. This is a tremendous savings to the Association, and we really thank Tommy Crites for providing us a reporter, flying a reporter up here to do this. Crites provides reporting services in maritime cases and specialize in maritime cases, and his reporters go all around the world taking depositions, and it would be nice if some of you could repay the generosity to the Association by making use of their services. They have some materials just inside the door.

Since the last general meeting in Hilton Head, the Board of Directors has met twice. We met yesterday here in New York, and then in March we met in Washington, D.C. The meeting in Washington was held at the offices of Winston & Strawn, and I want to thank Allen Black for his role in organizing that meeting and providing some very nice hospitality. We had a very nice meeting. I also want to thank the members of the Washington and Baltimore bars for participating in events that week. These traveling meetings are a nice way for the local members of the bar that are members of the Association to get to meet the Board and officers and interact with them.

Former president Chet Hooper and David Nourse have agreed to take over as editors of the MLA Report. For those of you who are new to the Association, the MLA Report is a publication that we used to publish

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very frequently, but we have missed publishing it for a few years. It's essentially a series of articles, case notes, and the like, and it's been a valuable tool for the members to stay up with what's happening in maritime law. Publishing it takes a great deal of work, and we greatly appreciate Chet and David agreeing to do this. If any of you have an article that you think is worthy of publication, you can send to it either Dave and Chet or send to it me, and I'll give to it them.

We have made a change in printers for the Proceedings of our meeting. The printer we'd previously been using did a good job, but we thought it was a good idea to occasionally put things out to bid to try and save money and make the best use of your dues dollars, and we received a bid that was substantially less. This has delayed the printing of the Proceedings a little bit, but it is going to save us a great deal of money.

Since the last meeting, President Marwedel has formed a new committee, the Government Counsel Committee. Membership on that committee is restricted to government lawyers, to give them a forum where they can talk about the concerns that are unique to their practice.

He's also formed a new subcommittee of the Committee on Marine Torts and Casualties, which is the Plaintiffs' Personal Injury subcommittee, which will be a committee for plaintiffs' personal injury lawyers. Plaintiffs' lawyers have always been welcome in this Association. We have many members involved in that area of practice who are very active in the Association, but they, quite frankly, have been underrepresented, and hopefully, we can have a forum where they can have a forum to discuss their special concerns.

President Marwedel has appointed Immediate Past President Burrell to be the Association's archivist, and she will be gathering documents, correspondence from presidents, things of this sort, to place in the permanent records of the Association. I think it's appropriate at this point to note that Ms. Burrell has been occupying a seat on this dais since 1994, when she was elected Membership Secretary, and we're all going to miss seeing her up here. In taking on these new responsibilities, Liz follows in the footsteps of a lot of other past officers who continue to provide valuable service to the Association. To paraphrase the Book of

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Common Prayer, when you leave office in the MLA, service is changed, not ended.

The Association has also been approached by the Pacific Admiralty Seminar to take over the sponsorship of that seminar, which is held every two years in San Francisco, and we're probably going to be meeting in San Francisco on a fairly regular basis, every several years, in connection with that.

And finally, we're continuing to make improvements to the website. The Breaking News element is up and running, and I would suggest you take a look at that.

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

MR. MARWEDEL: Do I have a second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: Any opposed?

One of the things on the website we're building, we have to save money for our presidential library, so it will be a virtual library. Liz Burrell will be going to the past presidents, and other people who have done work for the organization to collect materials and put them in the library under each president, in addition to having it in its appropriate place and category. We're trying to keep up with Washington, but save money at the same time.

Treasurer's report, Bob Clyne.

MR. CLYNE: Thank you, Mr. President.

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The Association's finances remain in good shape. Our fiscal year runs from May 1st to April 30th, and at the end of the third quarter, we had about \$363,000 in cash and investments, and that's the point in time at the end of January when the dues go out for the next year, so that was kind of our low point, so that's our reserve.

This year, dues were sent out by e-mail. I'm sorry to say that the collections so far have been sluggish. We saved a lot of money on the mailings, but I fear that some of the dues statements are buried in some members' in-boxes, so I say this every year, but if you haven't taken care of your dues, please do so.

The Board did, this year, decide to raise the dues \$10. I think that if you compare it to other bar associations, that it's still the best deal around by far. We don't do that lightly. Dues haven't been raised since 2003, and we took a lot of factors into consideration. Once again, I hope everybody will take care of their dues as soon as possible.

Regarding Hilton Head, thanks in no small part to Charlie Schmidt and his committee, the Hilton Head meeting was financially successful, and I define that as we don't lose money with respect to those meetings, so once again, thanks to Charlie.

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

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: Any opposed? So ordered.

Membership Secretary, Dave Farrell.

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MR. FARRELL: Good morning. On the recommendation of the Committee on Proctor Admissions, at yesterday's Board of Directors meeting, ten new Proctors were approved. They are: Matthew J. Bauer, of Mobile; Ryan C. Donlon, of San Francisco; Don T. Evans, of Wilmington, North Carolina; Morgan J. Gray, of Quincy, Massachusetts; David C. Hannan, of Mobile; Paul T. Hofmann, of New York; Kevin McGee, of Philadelphia; Colin A.B. McRae, of Savannah; David H. Sump, of Norfolk; and Professor George K. Walker, of Wake Forest University Law School. He is the first to take advantage of a recent by-law amendment that makes Proctor status available to our Academic members.

The Board also approved two new Non-Lawyer members: Mel Causer, of Houston; and Bryan C. Johnson, of Manville, Texas.

Since our Hilton Head meeting in November 2009, the Board has approved 62 new Associate Lawyer members and five Law Student members, but I'm sorry to report that there have been a dozen members who have passed away. They are: Donald B. Allen, of Pleasantville, New York; Carlyle Barton, Jr., of Baltimore; Henry E. Engelbrecht, of Bedminster, New Jersey; Richmond M. Eustis, of New Orleans; Herbert B. Halberg, of New York; Henk van Hemmen, of Red Bank, New Jersey; Peter H. Ghee, of New York; Judge Morris E. Lasker, of the District of Massachusetts; Frank H. Loomis, of Miami; Robert W. Mullen, of New Orleans; George W. Renaudin, of Houston; and Edward D. Vickery, of Houston.

Could you please join me for a moment of silence?

(Moment of silence)

MR. FARRELL: Thank you.

On the Breaking News tab of the website that Mr. Watson just mentioned, we are now able to post obituaries, and if you run across any and send them to me, I'll get them posted promptly so that perhaps people can attend services.

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Our membership is healthy – we’re at 3,075 -- but the life blood of the MLA as we move into the future is adding new members now, so I’m going to be contacting all Associate members, encouraging them to move up to proctor status, and I ask all of you to make sure that associates in your firm and other good people in your area who would benefit from the MLA and contribute to it submit applications.

Mr. President, thank you very much for everything. That concludes my report, and I move its adoption.

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: Any opposed? So carried.

Anne, did you want to come up and say a few words? Anne Hopkins, of the AMC.

MS. HOPKINS: Those of you who have already seen the 2009 bound volumes of AMC already know that in AMC’s 87 years, this is the most glamorous book we have ever produced, and the reason is that Liz Burrell is gracing the inside cover.

(Laughter)

MS. HOPKINS: We are very proud to honor Liz, who happens to be one of our associate editors, but because of all the things that each of you could add something to that she has done for the admiralty bar for many, many years, she has done it very beautifully. She has brought her intelligence with great charm, and we are very proud of her, so Liz, congratulations.

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(Applause)

MS. BURRELL: I take this as an incredible honor. Thank you very much.

MEMBER: Mr. President, will there be an autograph opportunity?

MR. MARWEDEL: I'm sure there will be time for that.

We will now go to our committee reports. Arbitration and ADR, Keith Heard, to be followed by Carriage of Goods, Ed Radzik.

MR. HEARD: Thank you, Mr. President.

The Committee on Arbitration and Alternative Dispute Resolution had a luncheon meeting yesterday at the comfortable new midtown offices of the Holland & Knight law firm. We wish to thank Vince Foley, of Holland & Knight, for his very capable assistance with the technical and culinary aspects of our meeting.

The featured attraction for our meeting was a speech by John Tsatsas, who has already been introduced by our president. John is the president -- in fact, he was recently reelected president -- of the London Maritime Arbitrators Association, which this year celebrates its 50th anniversary. He's also the immediate past chairman of the BIMCO Documentary Committee. John explained how he got into this business and his lineage, which was very interesting in its own right, but, of particular importance for our committee, he told us a lot about the history, development, current status, and future prospects of London arbitration, and, on the technical side, we had a long question-and-answer period where we talked about practice and procedure in London and compared it to New York. It was all very interesting. John was eloquent, and we are very grateful, John, that you made the trip across what we call "the pond" to come and speak with us.

The second item on our agenda was a presentation by Bill Honan, of New York, on the Supreme Court's recent decision on the case of *Stolt-Nielsen v. Animal Feeds International*. I've spoken about that case before. It involved class action arbitration. Various cargo shippers brought claims against parcel tanker operators for price fixing. A panel in New York determined that the claims could be brought as a class action arbitration. Judge Rakoff, from the Southern District, disagreed and vacated the ruling; the Second Circuit reinstated it; and on April 27th, the Supreme Court said the arbitrators exceeded their powers. There was some discussion by the committee as to whether that terminology by the Court was actually masking a vacatur based on the concept of manifest disregard of the law. What the arbitrators said was, when the clause is silent, that's okay; then you can have class action arbitration. The Supreme Court said no, you have to affirmatively agree to it. It's a very interesting case, with an interesting dissent, and Bill did a fine job of presenting it to us.

Our third and last substantive item was a presentation by Jay Pare, also of New York, on obtaining testimony and documents from nonparties in arbitration. He attended a program in this building last week, and he told us about the developments he learned about there. There are questions about the scope of Section 7 of the Arbitration Act, which deals with the subpoena power of arbitrators. There's a split in the case law on a couple of issues under Section 7.

The program also discussed the scope of the federal district court's power to order testimony and documents in the United States in aid of foreign proceedings pursuant to 9 USC § 1782, and the big question for us was does the phrase "foreign proceedings" include a foreign arbitration. The case law for a while said "no;" it's now trending in the direction that the phrase does include foreign arbitrations and Jay discussed that at length.

We have a newsletter. I didn't bring copies. I think there's enough paper outside. It will be posted on the website. Hopefully, you'll get notice of that.

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As a final point of personal privilege, Mr. President, I'd just like to say thank you for the interest and support you've shown to our committee over the past two years. We really appreciate it, and we wish you well.

That concludes my remarks.

MR. MARWEDEL: Carriage of Goods, Ed, to be followed by International Organizations. I have to tweak the order a little bit today.

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

Carriage of Goods met on Wednesday at the Seamen's Church Institute. It was a very enthusiastic attendance. We had about 45 in attendance altogether. We were privileged to have speakers on an array of subjects, including piracy, the recently-argued *Regal-Beloit* case in the United States Supreme Court, and recent developments toward the United States' ratification of the Rotterdam Rules.

Chris Dunn, a solicitor in London of the firm Waltons & Morse, and James Wilkes, of Gray Page, gave a fascinating and informative presentation of their experiences with the cases involving vessels that have been captured by Somali pirates and their personal involvement in negotiations with the pirates, which ultimately led to the release of the crew, their cargoes, and the vessel. Chris brought to our attention his handling of a case decided in the admiralty court in London in February, the *Masefield v. Amlin Corporate*, where the court was asked to consider whether hijacking of a vessel, crew, and cargo resulted in the cargo becoming an actual total loss under the terms of the British Marine Insurance Act. The court was asked to consider whether payment of a ransom to the pirates was contrary to public policy. The admiralty judge, Mr. Justice David Steel, decided that since the cargo owners had been fully informed about the negotiation between the vessel owners and the pirates, that they could not claim that the cargo was irretrievably lost, and there was a strong likelihood that the cargo would be released from capture. Justice Steel also held that it was not contrary to public policy to pay ransom.

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Mr. Dunn's presentation was followed by James Wilkes, whose company provides assistance to shipowners whose vessels are hijacked by the pirates. He and his company did not directly negotiate with the pirates, but they walked his clients through the negotiation process. Mr. Wilkes emphasized that his primary objective concerns were the safe return of the crew, as opposed to the vessel. He's determined that the pirates are not really interested in the cargo or the vessel itself and that he utilizes these elements to determine an appropriate ransom.

We had a speaker, Dennis Cammarano, of Long Beach, California, whose case, the *Regal-Beloit* case, involving an intermodal shipment from China that ultimately derailed in Tyrone, Oklahoma, and that case involved whether the Carmack Amendment would apply to the inland portion of the movement. We're expecting a decision from the Supreme Court by July.

The third topic we discussed in the committee was the development of the Rotterdam Rules and how that's going to be enacted as U.S. law. There are two ways: The first approach would be to have the Rotterdam Rules enacted as a self-executing treaty, without the need of enabling legislation. We conducted a straw poll of the members at the committee meeting, and there were 36 in favor of enabling or self-executing the treaty without the need for implementing legislation, and there were two votes against. At this point, our work is going to continue toward obtaining a resolution so we can present that to the President urging the United States to enact the Rotterdam Rules as a self-executing treaty and with conforming legislation which would amend or repeal COGSA, the Harter Act, and the Pomerene Act.

That concludes my report. Thank you.

MR. MARWEDEL: Next is Tony Whitman for Regulation of Vessel Operations, and he'll be followed by Alan Van Praag for International Organizations.

MR. WHITMAN: Mr. President, fellow members, officers, directors, guests, the Vessel Regulations Committee met twice this week,

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once in Washington, D.C. and once in New York. Dennis Minichello's Committee on Marine Ecology and Maritime Criminal Law met jointly with our committee on both occasions. Mike Underhill's Committee on Government Counsel, or Government Attorneys, met with us in Washington, D.C. I'm going to talk about the Washington meeting, which was full of substance and extremely well-attended.

We had, at the offices of Winston & Strawn, about 45 members and guests, and we had 20 people on the telephone, which I think may be a record for a regular committee meeting or a joint committee meeting for telephone attendees. The telephone attendees were vigorously involved in the meeting, I would like to say.

We had a tremendous turnout from government of people who are involved hands-on in the things that we are involved in, and it has been one of the goals of this committee meeting to have the opportunity for members to meet and interact with folks from the Coast Guard, folks from MARAD, folks from DOJ, and others who may be handling issues which are hot and issues which our clients are involved in, so I think we were successful in that regard.

We had acting JAG, Mr. Calvin Lederer, we had Captain Fred Kenney, we had Bud Darr, we had Commander Shannon Gilreath, we had two folks from the Office of Foreign Asset Control, we had Denise Krepp, from MARAD, and four or five of her staff attorneys, and we had Joe Poux, from the Department of Justice. The Coast Guard folks especially were a little sleepy from their long nights dealing with Deepwater Horizon, but it made for a very interesting meeting, and I will try to summarize the substance that we went into.

Bud Darr spoke extensively. He is now the Deputy Chief of Maritime and International Law. He spoke on piracy and how the Piracy Action Plan, which was enacted or adopted at the time of the close of the Bush Administration, remains the government's guiding policy. There are four working groups: Military cooperation and coordination, legal issues, shipping self-awareness, and strategic communications. Bud discussed how the United States is leveraging the ongoing work of international organizations with regard to piracy.

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The issue of arming ships is hot at the moment, and Bud admitted that reasonable minds can differ on this issue. He spoke of the dearth of assets in the West Indian Ocean and what he called, borrowing a phrase, the cruelty of time and distance, which has caused shipowners to view the necessity for arming ships in one way, shape, or form. IMO leaves this to the flag state. According to Bud, the U.S. flag, as long as it's in the vessel security plan and it's been approved by Coast Guard, arming the vessel is appropriate, although you have to consider local laws. I understand, Mr. President, that there may have been some revision on that word as of Wednesday of this week with an indication that ATF may not be happy about arming vessel crews on U.S.-flagged vessels, so this is an issue that is out there. Captain Kenney spoke briefly to this point, addressing the range of opinion on arming crews, but pointed out the fact that there has been no successful attack on a vessel with armed security, and so arming crews or having an armed security team on board seems to be working.

We had two speakers from the Office of Foreign Asset Control, and this was one of the issues that attracted great attention and I think our telephone attendance, because there is the recent executive order addressing piracy and paying ransom in connection with Somali pirates. David Brummond and David Stetson, of OFAC, both spoke. Brummond stressed that he and his colleagues are on the hotline to answer questions and respond to developing situations, but he admitted that there are issues in applying the executive order and that the more people know when they contact him, the better he can guide them. Mr. Stetson, who is counsel at OFAC, talked about the process whereby the Secretary of the Treasury can actually designate additional individuals and entities beyond those listed in the actual appendix to the executive order. There was an audience question as to whether OFAC has experience with regard to whether a company can pay ransom to free its crew, and the answer was no, that OFAC has not yet had to deal with that specific example. Most times, OFAC apparently has dealt with, later down the road, the issue of insurance reimbursement.

Bud spoke about MARPOL Annex VI, about the Marine Environment Committee IMO.

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Shannon Gilreath, Commander Gilreath, is the chief of the Prevention Law Group. He spoke to vessel general permits and the fact that the “discharge incidental to” concept is gone. The EPA and Coast Guard MOU are close to being final with regard to vessel general permits, and the Coast Guard regards itself as still in the educational phase with regard to vessel general permits. Commander Gilreath also spoke to ballast water and port security issues, as well as the well-being of seafarers, TWIC, and other issues.

And then an attorney spoke on the Convention on Standards for Training, Certification and Watchkeeping diplomatic conference upcoming and changes which may be of interest to U.S.-flagged vessels. Specifically, there will need to be a change in the United States regulations with regard to medical certification, because medical certification in our country is part of the every-five-year license renewal, but the STCW is going to require it every two years.

Captain Kenney then spoke about LNG terminals and the process for permitting LNG terminals, the difference between onshore and offshore, outside of state waters, and the fact that the Coast Guard’s involvement for an onshore terminal is really doing a letter of recommendation, which addresses the suitability of the waterway only.

MARAD chief counsel, Denise Krepp, spoke on various issues, including speeding up the Title XI process and the fact that there is money available for grants for the Marine Corridor Program and small shipyard grants.

We had John Cullather, who is the Democratic Staff Director of the House Subcommittee on Coast Guard and Marine Transportation, who spoke about the Coast Guard Authorization Bill, vessel general permits, MARPOL Annex VI, antitrust concerns over the lack of U.S. flag capacity in the liner trades, and the Rotterdam Rules. In particular, with regard to what Ed Radzik mentioned earlier, having to do with the Rotterdam Rules and their enactment or adoption in the United States, John asked the specific question and invited input as to whether practitioners

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and their clients would view it as better for this to be regarded as something which was self-executing or whether it needed to be adopted in U.S. law. Finally, John Cullather addressed the fact that the Coast Guard Authorization Bill is hung up in the Senate on a critical issue, which has to do with fishing guides on Lake Texoma, but he is hopeful that that issue will be resolved, and the Coast Guard Authorization Bill will go to committee.

Ladies and gentlemen, that concludes my report and my service as chair of your committee. It's been a privilege to serve you. I urge you to put Tuesday of MLA Week, Spring MLA Week, next year on your calendars and to plan to be with us for the joint committee meeting in Washington, D.C. Thank you.

MR. MARWEDEL: Thank you, Tony. Alan, International Organizations.

MR. VAN PRAAG: Thank you, Mr. President. Good morning, everyone. We had a midtown meeting yesterday that wasn't that well attended. Normally, we get between 40 and 60 attendees at our meetings. Yesterday, we had 18 members and guests and three attendees from the U.S. Coast Guard by telephone conference, Captain Fred Kenney, Bud Darr, and Alex Weller.

First we had Chris Davis reporting on the CMI, and Chris will be making a separate report this morning on the CMI activities. I don't want to be redundant, so suffice it to say two important things he reported is that the subscriptions that the U.S. MLA is going to pay to the CMI has been reduced by 40 percent. We also want to emphasize that there is a colloquium in Buenos Aires this October for the CMI, where some very important issues are going to be discussed. I know that Chris will get into the particulars. But nonetheless, we had a very substantive meeting that was excellent.

Captain Kenney spoke on the phone. First he spoke about the diplomatic conference in London for the 1996 Convention on Hazardous and Noxious Substances, attended by Captain Kenney and our president,

which addressed the 2010 Hazardous and Noxious Substance Protocol to amend the convention with respect to limits of liability and other details. Indeed, Captain Kenney was very complimentary of our president, Mr. Marwedel, during the course of his report on this issue. The proposal was adopted without many changes and will be open for signature in three months and is expected to enter into force in the next three to five years; however, Captain Kenney did not expect that the U.S. will sign the convention and instead expects the U.S. to rely on the domestic system in place to address liability for hazardous substances.

The Maritime Safety Committee, at the IMO in London, on May 19th, at 12:30, will have a meeting where the Department of State is sending someone to address the executive order of April 13th, which, as everyone knows by now, addresses sanctions against those seeking to destabilize the Somalian government. It's not addressed to piracy, but addressed to destabilization of the Somalian government. He points out that the EO has inaccurately been referred as to addressing piracy – I'm being redundant -- when it is limited to sanctions for paying the ransom to any of a list of individuals to whom ransom could not be paid, identified in Annex A of the EO. If a U.S. interest is considering payment of a ransom, the interest should seek guidance through OFAC, which can be contacted through a government agency such as the U.S. Coast Guard. He noted that OFAC, just a few days ago, issued scales and regulations in the CFRs on the executive order and sanctions, which is available to all to review. These are very important documents we are holding now.

As a non-IMO issue, he reported on a group of eight Arctic nations who are meeting to work on a search and rescue treaty which started last fall and had its second meeting in February in Russia and the third meeting scheduled in June in Oslo.

Bud Darr, of the U.S. Coast Guard Office of Maritime International Law, reported on the IMO Marine Environment Protection Committee activities. Greenhouse gas emissions from ships was first reported. Progress on this issue has been confined to renegotiation of the Kyoto Protocol and has been hampered by politics of developing countries such as India, Brazil, and others who are opposed to agreements or limitations.

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The next issue was energy efficiency in design of ships, which is taken up in modifications discussed which are projected to be included in MARPOL Annex VI. The North American Environmental Control Areas, ECAs, is expect to come into force as of August 2012 and adopted provisions to amend MARPOL Annex I to prohibit carrying certain fuels in the Antarctic, which will affect cruise and tour vessels that operate in that area.

The Ship Recycling Convention was enacted in May in Hong Kong, which addresses issues such as protection of the environment and safety and welfare of workers in the industry. Ballast Water Management Systems has reported that eight systems have obtained basic approval, and three systems have obtained the final approval. Systems are available to assist with meeting more stringent ballast water management guidelines from IMO and regulations in other jurisdictions.

Alex Weller, of the U.S. Coast Guard Office and adviser to the Office of Maritime International Law, reported on other issues at IMO, including transfer of data to combat piracy and proposals to making available LART information in piracy hotspots.

Doug Burnett then reported on UNCLOS developments, noting that it is not yet ratified, and although the Obama administration initially indicated support, a report on ratifying UNCLOS has been stalled, and without affirmative action by the administration to push for ratification, Senators Reid and Kerry are not expected to move forward on ratification.

Jerry White reported on classification societies. The ERIKA judgment was affirmed by the intermediate court of appeals in France, but on different grounds than the trial court. The judgment held that class societies were not entitled to CLC protection because they performed a public function in issuing certificates.

In the PRESTIGE case, all arguments on motions for choice of law are being argued on May 7th, which is today. Spain argues U.S. or Spanish law, and ABS argues Bahamian law, law of the flag of the vessel,

alternatively, of UAE or China, where the service took place, and in any event, no liability under applicable law was their position.

In a newly-reported decision, *Quail Cruises v. Agencia De Viagens CVC Tur Limitada*, the District Court in Miami held that a purchase of a vessel would be bound by a forum and law selection clause in the class society rules on the theory of equitable estoppel, but allowed the purchaser to amend its complaint to argue that the forum and choice of English law is unreasonable under the circumstances as it would deprive the purchaser of a remedy.

Finally, we had a report from Boriana Farrar, a Bulgarian lawyer working at Hill Betts, who reported on seamen's wage claim cases and enforcement of forum selection clauses, pointing out the recent case of *Balen v. Holland America Lines*, which enforced an arbitration clause allowing the claim to be decided in the Philippines and also pointed out a conflict in the 11th Circuit, *Thomas v. Carnival Cruise Lines*, which denied enforcement of a forum selection clause because the law of Panama did not provide the statutory wage remedy available in the U.S. Looks like this issue will have to go before the Supreme Court of the United States.

That is my report, Mr. President. Thank you very much.

MR. MARWEDEL: Thank you. We'll next go to Cruise Lines, Sean O'Neil, followed by Fisheries.

MR. O'NEIL: Thank you, Mr. President. My name's Sean O'Neil. I'm the vice chair of the Cruise Lines Committee. Yesterday, the Cruise Lines Committee met at Freehill's office. We want to extend our gratitude to Mike Unger, who hosted us as well as making certain technical arrangements at the last second, because our chair, Bob Peltz, was not able to attend because of a personal conflict that just arose.

Yesterday at our meeting, we had two presenters speak. The first presenter was Michael Eriksen of Miami. He was providing an update on the status of forum selection clauses in the cruise industry. Michael had

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to give his presentation over the telephone because the Florida Supreme Court issued a briefing order in the case he was to discuss with us on Monday, mandating that he submit his jurisdictional briefs to them by today, so he was in the middle of doing his brief and also took time out of it to give us a presentation. It was a very lively discussion about the presentation. He has a number of interesting points that he raised that will be before the Florida Supreme Court. And as mentioned a minute ago, this is a hot bed. It's a very timely topic that's going on in forum selection clauses, particularly the cruise industry right now, but it may apply in a lot of different contexts, and depending on what the Florida Supreme Court does, the parties involved may actually take it up another level, and we may see something in the future at the Supreme Court.

One of the issues that Mike raised was a question of whether the passenger ticket and the forum selection clause serves to deprive a Florida resident of a jury trial on the basis that they cannot establish diversity jurisdiction when they're bringing their claims in federal court, and so that's why I say these kind of issues are with respect to the cruise industry, but they may actually permeate in a number of the other committees.

The second presenter was Jerry Hamilton, also of Miami. He gave an update on recent trends in shore excursion cases. This was followed by a very lively discussion amongst the 26 members in attendance, some of whom have had some personal experience in shore cases. Luckily, none of them have been actually participants in any of those cases, other than as lawyers.

Part of the reason why this is becoming a big issue are that these shore excursion cases have now begun to have large damages where we've had bus crashes, had a couple of other things, and so you have a lot of injured people, and that's creating a new avenue for certain lawyers to try to find recovery over here in Florida.

We then followed with a discussion on motions to dismiss. It was a good discussion. A lot of the members participated.

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

MR. MARWEDEL: Thank you. Fisheries, Kevin, followed by Chris Davis for a CMI report.

MR. THORNTON: Good morning, Mr. President, board members, guests, and members of the MLA. The Fisheries Committee met yesterday at the offices of DeOrchis & Partners, and I thank Vince for his cordial accommodations and assistance.

We had a guest speaker, Gregory DiDomenico. Mr. DiDomenico is the executive director of the Garden State Seafood Association, and he gave us a comprehensive report on four topics of great interest. The National Ocean Policy Initiative, which the administration has recently issued, has been described as a land use policy for the beach out to the water, and it's of great interest not only to the fishing industry, but also to offshore energy, wind turbines and the like, and also I think to offshore oil drilling and navigational and the coast.

His report also talks of the National Catch Shares Policy, which is another new administration program. They're focusing on trying to assist the commercial fishing industry in allocating species and resources.

He spoke also briefly on the Marine Mammal Protection Act, which is always of great importance, to have as little interaction as possible between important marine mammals and fisheries.

And also, he addressed the National Pollution Discharge Elimination Permit, which is done at sunset on July 31st of this year. It's of great importance to boats 79 feet and under. They've been exempted for two years. That expired, and there's been really already an exemption approved for an additional three years for recreational boats that does not apply to commercial fishing boats yet or to service boats, ferries, and pilot boats and things of that sort, so it's an important issue. If you have clients that were concerned about that, you may want to check with your congressman or senator.

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We had an interesting report sent in by our vice chair, Mark Coberly, on recent developments with the National Marine Fishery Service Office of Law Enforcement and their practices. There have been some efforts at making some important changes. His report was assisted ably by a comment from Steve Ouellette and David Smith, who are from Boston, Massachusetts. They've been on the front lines dealing with protecting and defending commercial fishermen charged with violations, often very technical violations which result in Draconian fines, in one instance, 27 separate incidents of failing just to report, and it was a \$10,000 fine for each incident, and the enforcement people knew about it and didn't really alert anyone, and the fine of \$270,000 and loss of fishing privileges for eight months is virtually a death sentence. So it's been discovered that there's a June 22nd, 2010, meeting that's in the works that's being planned for Washington, D.C. with a federal mediator and agency representatives and perhaps some industry representatives in Washington, D.C., so we're keenly interested in that, and we hope to get a seat at the table.

We had a report by Lisa Reeves, who does our newsletter, and we had an open discussion, and it was well-attended.

And thank you. That is my report.

MR. MARWEDEL: Thank you. Chris Davis, CMI, followed by Dennis Minichello, Marine Ecology.

MR. DAVIS: Good morning, Mr. President, members, and guests. The CMI, Comité Maritime International, met for an executive council meeting March 15th through the 20th. It was a virtual meeting through a series of e-mail exchanges, rounds of e-mail exchanges.

I'd like to focus briefly on the Reforms Steering Committee's recommendations that were approved at the Rotterdam Assembly in September of 2009. Those have now been implemented, and seven sort of major elements of that include one, as Alan Van Praag mentioned, a reduction in most MLAs' subscriptions or dues. Alan mentioned the

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40-percent reduction for the U.S. MLA, which translates to close to 50 percent, given the recent drop in value of the euro. There's been an elimination of the temporary member dues, shortened terms for members of the executive council from four years to three years, which should at least result in more turnover in the executive councilors and also ensure proper geographic representation.

We are expanding and improving the website. As many of you know, Francesco Berlingieri has been in charge of the website and the CMI publications. He turned 88 in February of this year. Henceforth, those functions will be taken over by Digital Marketing Agency, in Sydney, Australia.

Improved dialogue and consultation process with national MLAs is also part of the reforms, with a view to ensuring that the future work program of the CMI is both relevant and of interest to national MLAs, including this one.

We're continuing to work with the Audit Committee to ensure the accuracy and transparency of the CMI's financial statements, practices, and accounts.

And last, but not least, the CMI continues to encourage the formation of new MLAs around the world, and they're in discussions at this moment with Zaire, Honduras, Latvia, Kenya, and Estonia, who all are forming MLAs and are joining the CMI.

I will not spend any time, due to the time limitations, on the current and future work program of the CMI. That's available on our website, cmi.org. I would encourage you, if you have any ideas for our work program, Nigel Frawley, our secretary general, is here with us today. Please contact him or myself with any ideas, and they will be relayed to the president, Karl Gombrii, and the executive council.

Finally, a quick word on an upcoming conference. A CMI colloquium is scheduled in Buenos Aires, Argentina, on October 24th to 27th, 2010. The topics include environmental salvage, judicial sales of ships,

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a retrospective look at the Brussels Collision Convention of 1910, and progress for the last 100 years, Arctic and Antarctic navigation issues, and the Rotterdam Rules. The CMI Annual Assembly will take place on the last day of the colloquium, October 27th, and I understand that the social events will include a tour of the old port area, La Boca, an excursion on the Parana River, a gala dinner, and, for those so inclined, tango dancing.

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

MR. MARWEDEL: Dennis Minichello, Marine Ecology, followed by Marine Financing, Frank Nolan.

MR. MINICHELLO: Thank you, Mr. President, officers, directors, members, and guests. As Tony Whitman informed you, we had two joint meetings with his committee, as well as on Tuesday, the Government Lawyers Committee joined us in Washington, D.C. I am not going to repeat what Tony said with regard to the Tuesday meeting. I do want to supplement his very fine report, however, to mention that Joe Poux also talked about a couple of other subjects in addition to what Tony mentioned, and those are with regard to the COSCO BUSAN case.

Mr. Poux suggested -- or he stressed, I should say -- that the Department of Justice is not criminalizing negligence, but rather going after, in that particular case, prior acts committed by the pilot, as well as postaccident actions taken by the owners and the managers to hide the negligent acts that were committed during the course of that voyage which led to the collision with the bridge.

He also mentioned that the Department of Justice has obtained its first conviction for a false ballast water log, and included in that conviction was a five-year ban on the ship from ever entering U.S. waters during that period of time.

The meeting on Wednesday afternoon was at the offices of Holland & Knight in the afternoon, and I do want to thank Holland & Knight for their hospitality. It's always appreciated.

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Our meeting consisted primarily of a report from Larry Kiern on the latest developments in Washington. Larry was very informative as to what was going on both within the administration, various agencies, as well as in Congress, and he advised us on upcoming legislation and status, which was really a follow-on from last year's report in Hilton Head.

We then focused our meeting on the subject of the investigation of casualties, and for that we had a wonderful presentation by Captain Kenney, who I think must have a twin, given how much he's participated both in Washington and at our meeting and other meetings here in the MLA. It was a very fine presentation. Captain Kenney brought us up to date on how the Coast Guard looks at investigations, how they are conducted, the distinctions that are drawn for purposes of either civil or criminal investigations, and the possible consequences, stressing the entire time the importance of cooperation of vessels and their crews in those investigations, especially if there is an ongoing incident, such as an oil spill or a casualty that involves a risk to life or property.

We then heard a presentation from Mike Underhill. Mike, of course, is with the Department of Justice, and he had a very interesting topic on the modern electronic bridge and how discovery considerations are arising out of that and how they impact a decision as to when and how to file a lawsuit in the event of a collision or an allision. That also was very informative and dovetailed nicely with Captain Kenney's remarks.

One other major accomplishment that we announced and that we highlighted at this meeting was the publication of our first newsletter. It's called "Bilge and Barratry." There are copies, I hope there are still copies out here, but if there aren't, it will be available on the home page of the MLA website.

And I would like to mention the contributors to this publication, because they certainly made significant contributions, and I want to acknowledge their work. First of all, I'd like to acknowledge my fellow officers, Alex Giles and Katharine Newman, for their assistance in helping to edit this first newsletter. Then I would like to acknowledge the authors. We had two very fine articles, one by Mike Underhill and a second

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one by Colin de la Rue and Charles Anderson talking about salvage, and I commend the reading of both of those articles, because they highlight important issues which are germane, I think, to the practices of a lot of you in this room. We also had contributions in the form of case notes, and those were made by Gene O'Connor, Alberto Castaner-Padro, Scott Sheffler, Jeff Vogel, and Patrick Ward. And in particular, Castaner-Padro, Sheffler, Vogel, and Ward are all young lawyers, members of the Young Lawyers Committee. Alex Giles reached out to the Young Lawyers Committee, and I have to tell you that within 24 hours of the invitation to the young lawyers to do summaries of cases, we had received basically the volunteers, and it was very heartening to know that our young lawyers are so willing to participate in this work and assist us in our committee work, so my compliments and my thanks to the young lawyers for that effort.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. Marine Finance, Frank Nolan, followed by Marine Insurance, Jonathan Spencer.

MR. NOLAN: Mr. President, members, the Marine Finance Committee and its subcommittees met on Wednesday, May 5. The subcommittee meetings were held in the lovely new facility at Holland & Knight on 52nd Street, and I have to say that none of us missed the Telephone Building.

But we started off with the Joint Subcommittee on Maritime Liens and Mortgages, which we have with Practice and Procedure, Yacht Financing Subcommittee and the Subcommittee on Coast Guard Documentation, U.S. Citizenship, and related matters. I'll try to confine my remarks to a summary, so that we can all escape before the restroom facilities close here today, which happens shortly.

We had an extensive conversation on the *Jaldhi* situation and Rule B and what can be expected and not expected from Rule B. We moved on to a discussion of the situation with UCOTA, the Uniform Certificate of Title Act, or affected vessels, and how that would interact

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with existing statutory and regulatory framework involving particularly recreational vessels under federal law. And we had a presentation by Doug Cameron, of the Coast Guard. Doug started off by warning us that he was not in a position to discuss any contemplated or ongoing rulings of the Coast Guard and that that was not his function and would be a terrible violation of the Administrative Procedures Act, but after plying him with coffee and doughnuts, he did give us a very useful presentation on the staff structure and passed out diagrams of the staff structure of the Coast Guard reflecting all of the empty and emptying billets, so that we could expect that they would be very stressed in terms of their ability to respond to ongoing thoughtless and ill-considered initiatives from the Marine Finance Committee and others.

So we had a further conversation on that and some further dialogue with the Coast Guard, and we agreed that in terms of our efforts to foster some positive and rational interface between UCOTA and the federal statutory scheme and the regulatory scheme, that we would try to focus our comments and focus our points of interaction with the Coast Guard and with UCOTA, and to that end, we formed, in the afternoon, a working committee of seven people, three of whom were not there and may not even know it yet, but those I find are some of our best prospects to do the work. They have absolutely no choice. And as I commented at the meeting, when I asked for volunteers, it was like waking up in a graveyard.

So in the afternoon session, we were evicted from Holland & Knight, rightfully so, and we relocated the general meeting at Vedder Price's aerie high over "Mama Mia" and "Wicked" over on Broadway, for which I thank myself. There we discussed a number of recent developments. I'll just give them to you very briefly, because I know about the restroom issue.

MR. MARWEDEL: We have cups up here if you need one.

MR. NOLAN: The much anticipated and feared coming rule-making that may be initiated by Customs on the carriage of repair materials by foreign flag vessels in the offshore oil patch, particularly down

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in the Gulf of Mexico, which we reported on last year, nothing has happened yet, but we're waiting for the other foot to fall.

With the Coast Guard, we reiterated once again, as we usually do four or five times, the situation with UCOTA, staffing, and the like. We discussed the status of the export of vessels, or the potential export of vessels, and EPA complications on hazardous materials, particularly PCBs and asbestos, and how this is affecting even the sale of vessels from the United States, which may not, in fact, be going to the breakers.

We had had a report, a brief, glancing report, from the representative of MARAD. He got off the phone too quickly for me to get his name, but he did tell us that they are considering rationalizing their regulations on citizenship, measuring citizenship for purposes of the Maritime Administration laws, and that they would invite us into that process, where possible to do so. We were very elated because it would, of course, give us something to talk about for years.

We talked about the Marine Highway program and the fact that the Harbor Maintenance Tax is probably enough to kill it off, and the numbers don't seem particularly high, in any event, but we were nonetheless willing to talk about that.

We discussed a number of pending issues in the case law, I think most of which have already been raised here. And finally, we discussed CLE possibilities for May 2011, and we believe we've settled on a program we'd like to put together on developments in the insurance industry and marine finance and how those affect the structuring of transactions and insurance requirements. We will be open to a discussion, whether we do that at our own meeting or we do it in conjunction with the MLA on a broader basis at the meeting, depending on what works best for the Association.

And that, Mr. President, concludes my report.

MR. MARWEDEL: Thank you. Jonathan Spencer, Marine Insurance, followed by Lisa Reeves, for Marine Torts.

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MR. SPENCER: Good morning, Mr. President, members, guests. The Marine Insurance Committee met Wednesday morning at the Wall Street offices of CNA, for whose hospitality we are always grateful.

We opened the meeting with Gene George, of Cleveland, our Newsletter Subcommittee chair, who presented our newsletter. There are paper copies on the table outside. It has the usual extensive array of new cases, also a very detailed article by Roger Phillips, of TecnoRisk, in Seattle, on Medicare holdbacks and reporting requirements, and I would commend that to you, any of you who are involved in dealing with injury and illness issues in the marine context.

Gene then went on, he's also counsel to an Ohio insurer which does some business in Canada, and he has been extensively researching the 2009 amendments to the Canadian Insurance Companies Act. This seems likely to impact on the activities of foreign insurers in Canada in some measure or another, possibly to the extent where they would require to be licensed in Canada. The problem is compounded by the fact that various provinces are also enacting their own legislation. Gene is watching that, with able assistance from Shelley Chapelski, in Bull Hausser's office in Vancouver. That has been tremendously helpful to us.

As I say, the newsletter is out there, and I must also acknowledge the contribution of Gene's legal assistant in Cleveland, Brenda Marmol, who always unstintingly and patiently works through our various edits for us.

Joe Grasso, who's the vice chair of the committee, sent his regrets. He's in San Francisco at the Board of Marine Underwriters meeting, but he left us some notes on recent federal legislative developments, the most significant, perhaps, being the Wall Street Reform and Consumer Protection Act of 2009 that was passed by the House in December. It provides, amongst many other things, for the creation of a federal insurance office, and apparently, the Democratic and Republican legislation that's going forward in the Senate both embody the same provision, so we seem to be moving towards federal regulation of insurance.

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Next, John Ryan, of New York, our Cargo Subcommittee vice chair, presented again to the committee the comparison work that was done by a joint group formed by AIMU and by the Marine Insurance Committee on behalf of the MLA to do a review and comparison of the new London cargo clauses with the existing maritime cargo clauses. We did introduce this in Hilton Head, but we took the opportunity yesterday of bringing it to a wider membership. They've done sterling work. That's available on the AIMU website and on the committee website. It will also be the subject of an AIMU webinar on June 14th. AIMU is doing more and more educational work over the internet, and if you're not familiar with that and are involved in insurance claims, I would commend it to you, underwriting and claims.

We had three guest speakers yesterday -- four, in fact. The first was Willa France, of New York, who talked to us about collaborative practice, which is a new form or a burgeoning form of dispute resolution, and apparently, this started, or began, in the family law arena, which has some application to commercial disputes. And the idea behind it is that the parties meet in a nonadversarial atmosphere, and it seems to be particularly apt for parties who want to resolve differences, but continue in any ongoing commercial relationship that they might have. Again, they have a detailed presentation on that on the committee home page.

Our second guest speaker was Svante Johansson, who is actually the Swedish average adjuster. There's only ever one average adjuster at a time in Sweden. It's a crown appointment there. But he's also professor of maritime law and transport at the business school at Gothenberg University, and he talked about the potential impact of the Rotterdam Rules, if enacted, on the adjustment of general average, because the proportion of fault provisions of the Rotterdam Rules and the removal of the error in navigation defense is likely to have some impact on the general average universe, and we thought also on collision settlements, eventually.

Next up we had Chris Dunn and James Wilkes, from the UK, and Ed Radzik has already described their presentations. Again, we'll have material on the committee home page. The thing that most struck me about what James Wilkes says was that the average time to negotiate ransom with the Somali pirates is now moving out towards 180 days.

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When we talked about it this time last year, the average time that a ship was detained was 56 days. So this is yet another illustration of the economic impact of the situation in Somalia.

And that's about it. This is the end of my term, lamentably, as the chair of the Marine Insurance Committee. Joe Grasso, of Philadelphia and New York, will be taking over. And Mr. President, I would like to thank you and your predecessor for all the encouragement that you gave me during my tenure.

MR. MARWEDEL: Thank you. Lisa Reeves, Marine Torts, followed by Offshore Industries, Brad Jackson.

MS. REEVES: Good morning, everyone. Jack Scalia, our outgoing chair, expresses his regrets. He'd hoped to be here, but unexpectedly, he must be in the office today, so he's asked me to give his report, and you'll excuse me if I read from my BlackBerry, which I don't know how many of us live without anymore, it seems.

The Marine Torts and Casualties Committee met at 1:30 on Thursday, May 6th, at the Seamen's Church Institute on Water Street. Our new Plaintiffs Subcommittee held their meeting between 1:30 and 2:00. Paul Hofmann, of New York, chaired the meeting, as Stevan Dittman was unable to attend. Stevan will be the chair of that subcommittee.

Paul reported as follows: Six attendees were present, in addition to Paul Hofmann, who stood in for Subcommittee Chair Stevan. The discussion centered around the goals of the subcommittee, which are intended to be modest in light of the middle ground that the MLA should be taking on issues. It was agreed that proposals from the subcommittee would be discussed with the Defendants Bar Subcommittee before a request for action from the Torts and Casualty Committee. It was agreed that an e-mail list would be created for all those who wished to be in the subcommittee, in order for the chair to have the ability to communicate with the members. Several substantive topics were discussed that might be considered for discussion with the Defendants Bar Subcommittee,

including, number one, legislative overhaul of the *Robins Dry Dock* rule, number two, revision or repeal of the Limitation of Liability Act, limitations on damages, which are to the value of the vessel after the incident, but perhaps keeping concursus in place, and number three, the effect of the BP Horizon disaster and application of various maritime principles and OPA to claims.

Following the subcommittee report, 95 members and guests were addressed by David Korch, of EPS Settlement Group, on the current status of Medicare's role in liability settlements. CLE credit was offered for attendance at the meeting, and we would like to thank Laszlo Szabo, of New York, of the Young Lawyers Committee, for his assistance in arranging for the CLE. Mr. Korch began his presentation with the history of Medicare as a secondary payer, which has been the law starting in 1980. He explained the difference between Supplemental Security Income, SSI, which is funded by Medicaid, and Social Security Disability, which is part of Medicare.

He also offered some guidance on the current confusion over who is a responsible reporting entity, or RRE, particularly with respect to non-U.S. vessels or entities. The reporting mechanism is still not firmly in place, and reporting has been delayed again until the first quarter of 2011. In order to be considered an RRE, an entity must be making direct payment to a Medicare-eligible individual. It should be noted that "anyone who touches the money" can be responsible to repay Medicare for any conditional payment made by Medicare.

Mr. Korch highlighted some important points to remember: Document your files, be sure to identify and then satisfy conditional payments made by Medicare, report early to Medicare, do not wait until final settlement negotiations or trial, and in liability cases, but not workers' compensation cases, claimants must be a Medicare beneficiary at the time of the payment in order for MSP to apply. Consider using a Medicare set-aside, or MSA, when future medicals may be covered by Medicare. When using a life care plan, be sure to check the CPT codes, as not all future medical expenses are payable by Medicare and should not be factored into the MSA.

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There were many questions from the floor, which went on well after the meeting ended, and Mr. Korch's presentation will be posted on the committee's Website, along with our updated committee newsletters.

Finally, as this is my -- again, this is Jack's words. As this is my last report as the chair of this committee, I would like to recognize the tireless efforts of my vice chair, Paul Edelman, and my secretary, Lisa Reeves. It has been my distinct pleasure to work with them over the past years. I leave the committee in good hands with Lisa Reeves as chair, Charles Deleo as vice chair, and Paul Hofmann as secretary.

That concludes my report. Thank you.

MR. MARWEDEL: Thank you, Lisa. Brad, anything happening in Offshore?

MR. JACKSON: Do you know something I don't know? Mr. President, officers, fellow directors, fellow members, and distinguished guests, your Offshore Industries Committee met yesterday afternoon following the Marine Torts meeting. We met at the Seamen's Church Institute and are grateful for their supplying the facilities for our meeting. We had, I would estimate, 45 to 50 -- I haven't done the actual count of those who signed in, but 45 to 50 people present, which, to my mind, emphasizes the growing importance and recognition of the importance of knowing something about offshore industries, the Gulf of Mexico, and what really happens out there.

We had a buffet of programs. We talked about the Customs rules change, which our Marine Finance people have been talking about. We talked about the Deepwater Horizon incident and, of course, everybody was very circumspect. No one told anyone anything that you couldn't read in the newspaper.

We had Pete Foster, of the Department of Justice, come speak to us on the role of the Department of Justice in offshore incidents, and we were very grateful for his presentation. It was really excellent. Of course,

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we were required to make sure there were no members of the press present, but I assured him that was not really a problem with the Offshore Industries Committee.

Grady Hurley, the past chair of this committee, spoke about OSHA and its views on its authority over vessels and facilities on the Outer Continental Shelf and he also addressed the Medicare Second Payer Act. The emphasis was there's a lot going on. There's a lot to be cognizant of. And as I sit here this morning and listen to the reports, it strikes me what interaction there is between diverse committees like Fisheries, Marine Finance, Marine Insurance, Marine Torts, and Offshore Industries. We are all, to some degree, looking at similar problems, and I think that by coming together and hearing what each other's doing, we can develop some synergy between these committees to arrive at solutions for our clients' problems, and in my instance, for my problems.

It was an excellent meeting. We talked about plans for Houston in November. We're going to be down in the Offshore Industries Committee neck of the woods, and look forward to a grand attendance at our meeting there.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. Practice and Procedure, Josh Force, followed by Recreational Boating, Frank DeGuilio.

MR. FORCE: Thank you. Good morning, Mr. President, officers, fellow directors, members of the association, and guests. The Practice and Procedure Committee met on Wednesday at the offices of Carter, Ledyard & Milburn, and we'd like, once again, to thank them for their hospitality.

It may come as some as a surprise, but the first thing on our agenda this time did not actually involve Rule B. Instead, we focused on certain issues that are affecting Rule C arrest and the role of the U.S. Marshals Service.

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Under Rule C, the U.S. Marshals Service must serve process of arrest for vessels and tangible property. Mike Underhill, of the Department of Justice in San Francisco and the vice chair of the committee, reported that particular marshals' offices have experienced difficulties recently in timely executing arrest warrants because they have suffered reductions in their staff at the same time that their responsibilities in other cases, namely drug, immigration, and security cases, have increased.

The result is that arrests have not always been happening as quickly as counsel might want, and, as many of you who are involved in arrests know, that's particularly problematic because arrests often seem to rear their heads very late in the day on Fridays.

Mike posed the question whether there were good reasons to change the way in which process is served in arrest cases, for example, by allowing service of process by private process servers. Mike suggested that such changes were not likely and that neither the Marshals Service nor the Department of Justice was likely to support any of those types of changes.

We were also joined, by phone, by Lucy Roberts, who is in the General Counsel's Office of the U.S. Marshals Service. Ms. Roberts echoed Mike's comments and enumerated the reasons that the Marshals Service believes that it is important to have law enforcement personnel present in arresting vessels. Those reasons range from preventing disruption or conflicts that may arise in the course of an arrest to dealing with crew repatriation issues.

Ms. Roberts has been contacting the highest volume districts for arrests to determine how they handle Rule C arrests and what problems they may be encountering. She has found that, in general, the offices are focused on making things work better and working with the legal community as well.

Ms. Roberts told the committee that they could contact her with any problems and asked for its assistance in identifying problems. As a

result, the committee will be preparing an e-mail survey to get information on problems that counsel may be encountering in working with the U.S. Marshals Service to secure arrests in the districts in which those problems have been arising, any suggestions for improving arrest procedures, and also best practices.

On a related note, representatives of National Marine Services made a presentation on initial ideas they have for developing a database service to expedite emergency arrests. That was discussed in the committee, and we'll probably hear more about that in the future.

No Practice and Procedure Committee meeting would be complete without some discussion of Rule B, and Larry Kahn and Mike Frevola, both of New York, updated the committee on the post-*Jaldhi* world of Rule B attachment in New York. Since the fall 2009 meeting, the Second Circuit has held that its *Jaldhi* opinion should be applied retroactively as a result of the district court here vacating Rule B attachments of EFTs. Apparently, a number of judges did not even wait for the Second Circuit to rule before vacating those attachments and moving on.

There have been questions that have arisen, however, in cases where the parties agreed to post substitute security to avoid or release a Rule B attachment. In some cases, those agreements also involved the posting of countersecurity. Judges in the Southern District have split on whether these types of security agreements are enforceable or not in light of *Jaldhi*.

In addition, some judges have relied upon equitable considerations to maintain attachments where, for example, a defendant has evaded payment of an arbitration award. Larry also cautioned that the committee should monitor whether courts will attempt to narrow the scope of property that may be subject to attachment in the future under Rule B.

Finally, the Practice and Procedure Committee is working on two projects concerning its Model Local Admiralty Rules, which were last amended in 2008. First, with the assistance of the Young Lawyers

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Committee, we are surveying the district courts' local admiralty rules to determine to what extent they have adopted either the 1997 or 2008 Model Local Admiralty Rules. Second, we are compiling an archive of materials related to the drafting of the Model Local Admiralty Rules, which, when completed, will be posted on the website.

On a separate note, you may have seen in the lobby that there are copies of the most recent issue of the Benedict's Maritime Bulletin. Hopefully, there are still some more out there for you to pick up. The bulletin is actively searching for additional articles, and this is a great opportunity for you and your colleagues to be published in a national and international journal. If you have any interest in submitting an article, please contact either me or Frank Wiswall, who is the editor-in-chief.

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

MR. MARWEDEL: Thank you. Recreational Boating, Lars Forsberg. That will be followed by Salvage.

MR. FORSBERG: Thank you, Mr. President. Guests and fellow members, Recreational Boating met yesterday. We had in excess of 60 participants in our meetings, and we had a banquet of speakers as well. Frank DeGuilio was stepping down as the chairman of the committee, and I'm taking his place in making the comments today.

Our speakers have ranged from Kathleen Harris, from Marsh Private Service, that talked about yacht insurance and the trends there, including contractual liability, the frequency and types of claims that they're experiencing across the board, and the retraction in the numbers of underwriters.

We had a discussion about piracy involving yachts. In 2009, there were nine incidents of piracy involving yachts, and unfortunately, there were a couple of deaths involved in those situations. That was a presentation by Michael Daly and followed by the president of Sparkman & Stephens, Bruce Johnson, addressing the trends in yacht design, as well as the popular topic of greening effects and greening technology in yachts.

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That was immediately followed by Bob Tony, from National Marine Services, who discussed the trends in yacht sales, yacht foreclosures, and repossessions. An interesting phenomena is that the recession has caused the construction of new yachts to be flat or dead right now, but the sale of larger yachts, particularly used yachts, seems to be picking up a little bit, particularly in the last six months. New construction, as I said, is very quiet, at best.

We followed that conversation with the senior broker from Burgess Yachts, Peter Brown, who passed on that the super yacht market and the used boat industry is picking up a little bit, and the charter market, particularly in the Mediterranean, is improving.

We had our final discussion with David McWilliams and Robert Fisher regarding the Uniform Certificate of Title Act, which several of you have already heard about today. I all commend to you our “Boating Briefs,” which is also on our website, and a very well put together set of case reviews.

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

MR. MARWEDEL: Thank you. Salvage, Bill Storz, followed by Stevedoring, Anthony Filiato.

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

The Salvage Committee met at the new midtown offices of Holland & Knight on Wednesday. We had a well-attended meeting, both people attending in person and by telephone.

Our vice chair, Jason Harris, prepared a written salvage law update, which he discussed with the members of the committee. That’s been uploaded to the Salvage Committee page on the MLA website, and we will take steps next week to upload that to the general website, so it’s available to everyone.

Dick Fredricks, the director of the American Salvage Association, gave us an update on the U.S. Coast Guard’s efforts to develop firefighting and salvage rights.

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Dr. Dagmar Etkin, the president of Environmental Research Consulting Group, gave us a presentation of two programs that the ERCG is working on with NOAA. One of those programs is the elimination of derelict and abandoned vessels that are in environmentally-sensitive areas such as the Florida Keys National Marine Sanctuary. The issue with that is in the old days, derelict vessels went to grave on their own. They were made of wood or ferrous metals, and they would largely pretty quickly disappear. Modern recreational boats, fishing boats, often, their hulls are made of aluminum or plastics, and they don't degrade, and when they're left on a sensitive area like a coral reef, they do a lot of damage as they work during storms, so NOAA's taking steps to get rid of those.

The other interesting aspect, other interesting program working, is the wreck oil removal program. There are a lot of tankers and cargo ships that were torpedoed off the American coasts in the Second World War. A lot of those ships still have a great quantity of oil on board, and as those ships age, the structures are going to fail, and it's anticipated that there could be significant releases of oil. Some of these ships have hundreds of thousands of gallon of oil on board. So what NOAA's working on with this group is basically a survey process to locate the wrecks, determine their material condition, and make a determination on which ones need to have the oil removed at an early opportunity before the ship fails and there's an oil spill. That would involve, in shallow waters, divers to basically run a tap into the oil tanks on the vessel so that the oil could be pumped out, or in deeper wrecks, they would have to use remotely-operated vehicles.

The last presenter that we had was the Navy's chief underwater archeologist, and that was an interesting guest to have, because the archeologists, you might be surprised to find out, don't have a great love of salvors, but Dr. Robert Neyland, Bob Neyland, is really an expert in this area, and he gave us a great presentation, because the Navy is one of the leads -- there are a lot of archeologists that talk the talk, but the Navy is actually launching a substantial number of operations to find them and dive the ships and effect appropriate recovery and conservation.

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And he gave a couple of examples. They're working operations on Revolutionary War shipwrecks, Civil War shipwrecks, and he was the chief archeologist on recovery of the CSS HUNLEY, off Charleston, South Carolina, which, as you probably know, was a Confederate Navy submarine.

The interesting thing about when the Navy gets involved in something like this, even when it's through the Naval Historical Center, is the technology that's available to them, and I think that was really of great interest to everybody in the committee and probably to you as well.

For example, they had access to a small nuclear research submarine to do underwater search. They also make heavy use of relatively modern multibeam high-resolution sonar, which was developed for a number of reasons, but one of them was to locate mines underwater. So what this does, unlike the older side-scan sonar, gives you a very accurate picture of the bottom and the wreck in a near photographic resolution.

The other interesting thing was the use of AUVs. Everybody's heard of remote-operated vehicles, which are tethered to a mother ship and generally get their power from the mother ship, but they're limited because of that tether. The Navy and a lot of the underwater search companies are developing autonomous underwater vehicles, which are powered by batteries, they utilize a computer search program, and they operate independent of the mother ship. So you drop them over the side, they run a sophisticated search pattern, and then they are preprogrammed to surface at a particular point in the ocean where they can be recovered by the mother ship. So this is something that's obviously got a lot of Navy applications, but it's also being used in Navy archeology, and I would assume that you will see some of this technology used in the Gulf with the current problem with that rig.

Anyway, that's all I have to present. Thank you very much, sir.

MR. MARWEDEL: Thank you. Next is the Stevedores Committee, Anthony Filiato, followed by the Young Lawyers, Alex Giles.

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MR. FILIATO: Good morning, Mr. President, fellow members. The Stevedores, Marine Terminals, and Vessel Services Committee met yesterday morning at the Jones Hirsch offices downtown. The meeting was well-attended. We had in excess of 30 members in attendance. We also had members calling in.

Mr. Langan, of New Jersey, provided us with both a written and a verbal report of recent case law impacting the committee. I'd like to mention *Perdue v. Kenny*, a recent case in the United States Supreme Court involving fee-shifting statutes, and we held a discussion with the committee on how that might impact the Longshore Act fee-shifting provisions.

Several committee members took the opportunity to question Mr. Langan on his experience on bringing the *Atlantic Sounding v. Townsend* case up to the United States Supreme Court, which he was gracious to answer.

We then moved on to marine terminals issues involving third-party liability issues including issues when contractors come onto site and particular types of contractual language that should be employed, which is hold harmless language, and what types of insurances that should be requested in the contracts.

There was a further discussion of issues involve the Department of Labor's OSHA enforcement policies under the new administration, the new hiring of enforcement officials, and the specter of criminal prosecution down the line.

Dave Loh, of New York, provided the Freight Forwarders Subcommittee report, both a written and a verbal report. There were two particularly interesting cases involving federal preemption of state lawsuits against some freight forwarders involving the Federal Aviation Authorization Act that we found very interesting, because very few of us in the room were aware that act had such a clause in it providing for preemption.

There then was a discussion held involving changes at the Customs Department, new hirings, how that's interacting with the border patrol, where the personnel are going. It was quite interesting.

Finally, as several of the committees mentioned, we had a discussion involving the Center for Medicare and Medicaid Services, various issues arising from a responsible reporting entity centering on the CMS reporting and also on the Medicare set-asides.

Generally, the committee's opinion was dealing with CMS was difficult and sometimes a bit confusing, but as reported earlier, reporting standards are being pushed back again. They probably will be pushed back further, as it just simply did not seem to have the computer systems up and running properly.

We also discussed preparing for the Houston meeting and hope to have a strong attendance there also.

That concludes my report, Mr. President.

MR. MARWEDEL: Thank you. Young Lawyers, Alex Giles.

MR. GILES: Good morning, Mr. President, officers, directors, fellow members, and guests. The Young Lawyers met yesterday at the offices of Freehill, Hogan & Mahar. It was a well-attended meeting, a full agenda, with several guest presenters. Our first presenter was Frank Nolan, chair of the Marine Finance Committee, who spoke to us about mortgage foreclosure issues, including a discussion of ship finance documents and the concept of credit bidding.

We then had a roundtable discussion that was led by Gina Venezia, of Freehill, Hogan & Mahar, and Ed Powers, of Vandeventer Black, in Norfolk, as to the practical considerations for maritime arrest and attachment proceedings. We had a lively discussion of topics, including issues dealing with the U.S. Marshal, substitute custodians, and insurance requirements, among other things.

And finally, we had a presentation by Lieutenant Kelley Tiffany, of the U.S. Coast Guard, who spoke to us about the role of Coast Guard

attorneys and a brief overview of the various missions of the Coast Guard.

The Young Lawyers have been and are actively working on several projects for standing committees, as has been noted today, for Marine Torts and Casualties, Marine Ecology, Practice and Procedure, as well as a couple projects for the Association in general, and as always, we are willing and able to work on any additional projects where standing committees may have a need for our assistance. Of particular note, our committee is going to be reinstituting the committee liaison program to hopefully create better communication with each of the standing committees and provide better assistance in terms of those projects that you need our help on.

And I guess this is the point in my presentation or my report that you guys always are waiting for. As is typically our tradition, we reconvened last night for our social event at Vintage Irving, in Union Square, which was organized by Pamela Schultz. It was extremely well-attended, over 40 attendees for cocktails and dinner. And I have two words that summarize why the Young Lawyers social event is big time, and those two words are “corporate sponsorship.” We were very grateful for the fact that we had corporate sponsorship from SEA Limited and Stratos Legal, who helped defray the cost for a portion of the event last night, and we’re eternally grateful.

That concludes my report.

MR. MARWEDEL: I thought the two words would be “hang over.”

(Laughter)

That concludes the reports of our standing committees. Now we have special committees, and they’re going to make some very short reports. The first one would be the American Bar Association, Dick Leslie.

MR. LESLIE: Thank you, Mr. President, members, and guests. I’m the chair of the ABA Relations Committee and I serve as your member of the House of Delegates.

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This is the first year that we really had something that we wanted the ABA to do for us, and that was to pass the resolution which we call the Rotterdam Rules, so that we would be able to get to the Senate with the ABA's 430,000 members behind it. Basically, that was accomplished. It was the first time the MLA has proposed something in its own name, but I also went to the Tort, Trial and Insurance Practice section and asked them to cosponsor, along with the insurance section, and attended both of their meetings, wherein they were very gracious and were very happy to go along with us on this, basically on areas that they weren't all that knowledgeable on and were kind enough to accept my statement that this was a motherhood thing that we worked on for years and years, and we made all the compromises, and they could get some different views, because we didn't all have the same views, but ultimately, it came down to the ABA passing it as one of their first orders of business.

Forty three matters were debated and voted upon at that meeting. The usual parts of the meeting are the president and the chair of the House of Delegates and the secretary give reports, etc., but that really doesn't affect the MLA. There were no other specific matters for the MLA, no other really maritime issues or trial issues that were directly related. There are always things on criminal justice and *Miranda* warnings, misdemeanors, criminal discovery, model acts, paralegals, things like that, which are of interest to us, but nothing that we do directly.

I've served two years in this capacity for you. Right now, the president-elect is Steve Zack, of Miami, who's always been a very good friend of the MLA and the Tort, Trial and Insurance Practice section, which helps us in a lot of these things. Mike Daly, who was mentioned to you before, is working in that section, and if we have anything that we want done in the next two years, Steve finishes his president-elect year this year, and then he'll serve from August 2010 to August of 2011.

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

MR. MARWEDEL: Thank you. CLE, Mike Ryan, followed by the Government Counsel Committee, Mike Underhill.

MR. RYAN: Mr. President, officers, members, and guests, I'll start off with the usual rubric that I do every year. CLE is a responsibility of the individual. You are not all from New York, so again, I'll say it again and again and again, check with your local bar association to make sure that you are going to meet what they require. It's up to you. We, the MLA, have attempted to offer or present programs to help you meet that requirement, but we're not going to do it for you. We can't. It's up to you to make sure that what you need, you get.

Second, I've seen an increase in committee efforts to offer CLE programs. I think that is going to continue, and I applaud it. Shortly, there will be coming out call it a mini handbook, three or four pages, for the committee chairs as an outline or checklist to help them prepare for a CLE program. It'll give them an idea of what they need, the requirements that we, as an approved provider for New York State, require and what they need to submit, so that when the program is ultimately submitted to the state for audit, we don't get it turned back and people say, "Oh, my God, I lost, because I didn't do it." So it's important to meet the requirements. They're not ours; they're the states'. That helps.

CLE, three, there's a presentation. You've all received the notice of it. It's at the Seamen's Church Institute this afternoon, running from 2:00 until 5:00. It offers three CLE credit hours, one of which, from 2:00 to 3:00, will qualify as ethics. Two points on that. There will be a sign-in list, and there will be a gate keeper. If you do not sign in and do not sign out, you will have blown it. This is one of the requirements. That's where it's taken from. This is not to say that you have to stay for all three. This is being offered. It's up to you to take advantage of it. If you need to leave for a pressing meeting with a client, all right, leave at 4:00, only take the two, but you have to sign in and sign out.

Secondly, and perhaps most important, with deference to Bob Clyne, you are all asked to bring with you this afternoon a postpaid self-addressed envelope so that the certificates could be mailed to you when they're completed. Applying the ten-percent rule, I am sure that some people will show up without the envelope, so what I'm going to do is I've arranged to have a very, very small supply of blank envelopes which you can insert your address on, and you're going to pay a dollar, which

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covers the postage and the envelope. If you can get there beforehand, please do that, but I don't want to see Bob's marvelous efforts at the treasury go to pieces just because we're handing out free envelopes and postage from Hill, Betts & Nash.

MR. CLYNE: Better make it two dollars.

MR. RYAN: A dollar. That ends my report, Mr. President.

MR. MARWEDEL: Thank you. Mike Underhill, Government Counsel Committee, to be followed by the Committee on Uniformity.

MR. UNDERHILL: I'd like to thank President Marwedel for forming the committee, we appreciate it very much, and I wish he'd done it two years ago, because it's made my client relationships simpler. Every time I see a non-MLA government attorney on the street, they start turning the other way, because they're afraid I'm going to put the strong-arm on them to join MLA, so it's made my life simpler, less faxes, less phone calls, less everything, no clients, no problems.

We had our first meeting, thanks to the gracious hosting of Larry Kiern and Winston & Strawn and also thanks very much to Dennis Minichello and Tony Whitman, who allowed our committee-- most of my constituency is in Washington -- to meet jointly with them, with Marine Ecology and Criminal Practice Committee and Vessel Regulation Committee, Tony's committee.

We had about a half-hour presentation, very useful, by Amy Lovseth and Brian King, from Thomas Miller Americas, the UK representatives here in the U.S., who gave an excellent talk and slide show on some of the primers of marine insurance that were of benefit to a lot of my colleagues who are nonlitigators, and yet the marine insurance business greatly affects their day-to-day business, so it was useful for them, useful for us, and also, it turned out to be educational, I think, for even some of the practitioners and even the nongovernment attorneys, because they unfortunately have blind-sided one of my speakers, and other issues that come up with respect to piracy, not in my committee,

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but with Dennis's and Tony's, and we asked them to comment about the effect of piracy and proposals to arm vessels, American vessels, or, for that matter, any of their members, even non-American registered vessels, how that would affect P and I insurance. It was very interesting.

They also gave a good presentation on marine insurance issues and the nexus area of criminal and civil practice, particularly oily water separator cases and, for that matter, even oil spill cases like COSCO BUSAN, where the issue of coverage under P and I gets a little bit murky, and they went through with a very nice presentation, at least speaking on behalf of their people, Thomas Miller, not necessarily on behalf of all P and I clubs, as to how those coverages apply. So we look forward to having them, future talks and discussions, and working with our colleagues in the MLA

Thank you very much. That's the end of my presentation.

MR. MARWEDEL: Thank you. Dan, to be followed by the Web Site and Technology Committee, Marc Marling.

MR. MCDERMOTT: Good morning, Mr. President, distinguished board members, members of the association, and guests. The Uniformity of U.S. Maritime Law met yesterday afternoon at the offices of Marshall, Dennehey, Warner, Coleman & Goggin. It was modestly attended; however, the discussion was very enthusiastic -- there was a lot of participation and important discussions.

Cases that we discussed, many of them you heard about this morning. One of the advantages of the Uniformity Committee is that we have no constraints on what we can discuss, and we usually try to take issues and cases that are topical and very important to the committee and the Association as a whole.

We offered one CLE credit for attendance and participation. We had a few non-member guests that we were pleased to have. We had an attorney from Germany who sat in with us, and we had two law students from Tulane Law School.

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Our main presenter was Dennis Cammarano who discussed the *Regal-Beloit* case that Ed Radzik had mentioned earlier. Dennis gave a fine PowerPoint presentation which had a shift in emphasis from the Cargo Committee presentation. He talked about uniformity issues and possibly the impact on Rotterdam.

We also had Tim Lord speak about some of the issues involving MARAD, trying to get aid to third-world nations and the problems that are encountered there. Tim spoke about a Ninth Circuit MARAD case that was argued recently.

JoAnne Zawitoski gave a report on the *Jaldhi* case, which has been addressed this morning and is very important, obviously, to the New York maritime bar, but it's also very important to the whole New York community as the financial status of New York. There was a big push from the banking industry in New York for fear of New York losing its luster in the financial world. We talked about the brief that was prepared by the MLA in the *Jaldhi* case. It was an amicus brief that was authored by Ms. Burrell that was excellent in its presentation.

I'm going to divert a little bit here before I talk about the other cases. One of the main duties of the Uniformity Committee is address requests for amicus briefs. We had a discussion about what the procedure is with respect to a litigant who wants to have the MLA get involved in filing an amicus brief. There are two issues involved in a request. There's whether or not it's just going to support the petition for certiorari or argue on the merits itself. The MLA has in its bylaws, a procedure for litigants to undertake and the requirements for an application to the Board. An application should be addressed to the president, and it is then reviewed by the Board.

Often, the application then comes to our committee. As you know, preparing an amicus brief is both work and time intensive. Even if a respondent gets an extension from the Court to submit the respondent's brief, an amicus brief still has to be in filed within 30 days of the filing of the petition. So what we're going to be doing is reaching out to our committee in particular, the MLA, and the Young Lawyers, if they're looking

for projects to do. We will try to put together a team or a couple of teams to prepare amicus briefs, because it seems like there's been an increase in the amount of these requests, and there's a lot of scurrying around when the board accepts the application. So we'll be reaching out, as I said, and we're going to try and get people lined up to volunteer prior to the time an application is actually filed. So, you'll be hearing more about that from us.

Briefly, we talked also about the *Stolt-Nielsen v. Animal Feeds* case that Keith Heard had also mentioned, and one case that was not addressed this morning that we looked at called *Lee v. Astoria Generating Company*. It's a case in New York that deals with a worker getting hurt on a barge, and the question is whether or not the barge, which only moves once a decade for maintenance or emergency purposes, whether that, in fact, constitutes a vessel under *Stewart v. Dutra*. And then the next one is the preemption of Longshore and Harbor Workers Act over New York Labor Law. The New York Court of Appeals decided that this particular barge was, in fact, a vessel, so that was the first obstacle that was overcome.

Secondly, the preemption argument addressed whether or not the Longshore and Harbor Workers Compensation or New York State Labor applies. The New York State Labor Law, on the elevation aspect of it, (the "scaffold law") has absolute liability. So there's no comparative negligence involved. The court found that in this instance, distinguishing another case, *Cammon v. City of New York*, that the Longshore Harbor Worker Act does, in fact, preempt New York Labor Law when the injury occurs on a vessel on a navigable waterway.

And that concludes my report. Thank you, Mr. President.

MR. MARWEDEL: Thank you. Next is our Website and Technology, followed by the In-House Counsel.

MS. KRIEGER: Thank you, Mr. President. Good morning, members, officers, directors, guests. And I'm obviously not Marc Marling. I'm the vice chair of Website and Technology, Lynn Krieger. I would

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like to thank Jones, Hirsch, Connors & Bull for hosting our Website and Technology meeting yesterday and thank them for allowing us to linger about three times longer than our meeting should have gone. We had a lot to talk about. We are small, but we had a very animated and rousing discussion about the website and about technology that should be used to and can be used to enhance and improve our practices.

The fruits of our discussion will soon be posted on a new page of the website called Member Services. Everyone can access that page, and it will contain three topics: Travel, classified ads, and my personal favorite, tips and tricks. The tips and tricks portion will have recommendations and descriptions of various technology, products, services, gizmos, and gadgets that will help us, I guess, streamline our practices and make us all more efficient.

The other topic we discussed was finding a product or service that would allow people to attend meetings remotely. There's a lot of discussion today about people attending telephonically. We were tasked with finding a cheaper and better alternative than purchasing telephone lines and speaker phones at hotels. We found several great alternatives that are not only less expensive, but more collaborative, so they allow people to dial in either on their phone, or, as long as they've got a computer with an internet connection, they can attend a virtual meeting online, and the host of the meeting can actually put up documents, agendas, whatever it is that they're working on at the meeting, and the remote attendees can view it, they can edit it, and really fully participate in the meeting.

So those were the two big topics we discussed yesterday. If anyone has any suggestions/comments for the Website and Technology Committee, please do contact us. We are very eager to discuss the website and technology.

And that concludes my report.

MR. MARWEDEL: Thank you, Lynn. Skip Volkle for the In-House Counsel Committee.

MR. VOLKLE: Thank you, Mr. President. We had our second meeting. Thanks to former President Liz Burrell for forming our committee, because it gives the in-house counsel a good opportunity to get together and compare best practices and talk about issues that face us all as somewhat understaffed in-house counsel, thanks to the co-chair, Art Mead, from Crowley, and to Holland & Knight for hosting us. And Vince Foley, thank you for all your assistance.

We started off our meeting talking about the Rotterdam Rules. Again, for those of us in international shipping, it's a big deal. Chet Hooper came over, and thanks, Chet, for giving a presentation a little bit on the rules themselves and somewhat more of a focus on what we'll call the COGSA fix. From a domestic industry standpoint, there is an intense interest in ensuring that the adoption of Rotterdam did not repeal COGSA or take away the ability of domestic carriers to incorporate COGSA for domestic carriage. One thing that we did discover, I think, as we looked at the present draft of the COGSA fix, is it appears, while it probably takes care of most domestic carriage, it looks like it may not include the Great Lakes, and Chet said he was going to take a look at that. The other issue that we've asked to really take a hard look at, and just to make sure that the Rotterdam Rules don't apply to Jones Act trade in Puerto Rico.

After we talked about the Rotterdam Rules, we talked about the discovery and mentioned specifically a recent Florida case where the court individually sanctioned in-house counsel for discovery violations, and we certainly can't have that, so we are going to, actually, at our next meeting, focus a large part of our meeting on the discovery, and again, the comparison of best practices across those of us in the industry.

After that, we had a CLE presentation on the Foreign Corrupt Practices Act. Brooke Rodgers, from the Washington, D.C. firm of Steinman & Rodgers, who specialize in FCPA, came and gave a presentation to all of us. Again, there was a recent case of a tugboat company who was found guilty of an FCPA violation in Panama, where he basically bought tugboat contracts in Panama Canal and buoy servicing contracts, and he

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wound up with a 67-month criminal imprisonment, which is the longest criminal imprisonment ever under FCPA, so again, it kind of focuses our attention in the marine industry, and Brooke is reprising her CLE program this afternoon, so I encourage you to go and see that.

And lastly, we talked about piracy and the president's executive order and some of the practical issues that the EO raises if one of our ships is taken in the Gulf of Aden.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. Our last two reports will be first by Pat Cooney on the fall meeting in Houston.

MR. COONEY: I'm not alone.

MR. MARWEDEL: I see you have your press secretary with you.

MR. COONEY: Mr. President, members, we're here to plug Houston. We were going to have Mike Bell here, who is our chairman. Mike was going to come dressed in his cowboy outfit, but he was last seen bogged down in Times Square, fully clothed. He's disappeared. He's nowhere to be found. Actually, he's actually at an important meeting that he wouldn't talk about, except that it had to do with the Gulf of Mexico, so we're here.

And we're here to invite you to come to Houston and enjoy our hospitality. It's going to be November 10th through the 13th. On the 10th, the University of Texas is going to have a full-day CLE seminar, which has always been good in the past. I can't really give you a preview, because the meeting to plan the seminar happens next week.

MS. ADAMS: Next Thursday.

MR. COONEY: So I can assure you that it will be topical, and it will probably have something to do with offshore drilling and other things like it. Who know? Who knows?

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The other thing is that outside, you will find a little flier with regard to hotel accommodations, and I encourage you to act swiftly. If the oil heads in the wrong direction, all the responders will be in this hotel, so get your reservations. And all I can say is on behalf of all of us down there, we want y'all to come.

Now, Julie's got a presentation.

MS. ADAMS: Gentlemen, these cowboy hats are for you. We want you to be ready for Houston.

(Applause)

MR. JACKSON: Y'all come on down there, you hear.

MR. MARWEDEL: Phil Berns used to take pictures and threaten everybody, and now we have a successor.

MR. JACKSON: Are you comparing me to Phil Berns?

MR. MARWEDEL: Oh, no. He stands alone. JoAnne Zawitoski will talk about the 2011 meeting.

MS. ZAWITOSKI: Mr. President, officers, members, and distinguished guests, aloha. In case you haven't heard the exciting news, I'm very pleased to report that our Association's Fall 2011 meeting is going to be held on the island of Oahu, in Hawaii, from December 2nd to December 7th, 2011, in conjunction with the observation of the 70th anniversary of Pearl Harbor. We're going to be staying at the five-star J.W. Marriott Ihilani Resort at Ko Olina, which is an oceanfront property on the southwest shore of Oahu. The resort has its own private, swimmable beach. It's got a first-class spa, championship golf and tennis, a nearby marina for sailing, boating and fishing, and lovely rooms with either oceanfront or mountain views, and yet we're still a short drive away from both Pearl Harbor and the excitement of Waikiki Beach and Honolulu.

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The rooms at this hotel usually go for between \$500 and \$750 a night, but due to the hard work of your Planning and Arrangements Committee, I'm pleased to report that we've negotiated a terrific deal with the hotel, so that it's only going to cost our members and guests \$239 a night. No resort fees. No mandatory gratuities. We've also arranged for discounted parking and discounted internet use.

We are also committed to lowering the registration fee for the meeting from what it's been in previous years, and I'm also told by my West Coast friends that this particular week, this first week of December, is a nonpeak time for people to fly to Hawaii, so you should be able to get very advantageous airfares if you book early.

The meeting is going to feature at least ten hours of CLE, some great social events, and at least one free night to dine around as you please.

So, in short, if you have ever thought of going to Hawaii or if you're looking for a reason to go back, I hope I've made you an offer you can't refuse and that we will see you on the beaches of Oahu from December 2nd to December 7th, 2011. You can look for your registration materials in the mail and in your e-mails. We're targeting February or March 2011 to get those out to you, and I hope to see you there. If you have any questions, I'll be around after the meeting to answer them, and I encourage all of you to attend.

So thank you very much, Mr. President.

MR. MARWEDEL: Thank you. Two of the largest meetings that we have had in the past have been in Hawaii. It's just a wonderful venue. People can go to the other islands. Most people, if they go that distance, they'll make a vacation out of it. And the last day, of course, is the anniversary of Pearl Harbor, and there's a very moving ceremony that is put on on December 7th, so we'll be able to, for those who want to stay over, to attend that.

Is Borianana here, Borianana Farrar? Would you come up and tell us about tonight's dinner?

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MS. FARRAR: Mr. President, officers, members, guests, the Dinner Committee wants to welcome you tonight at the annual MLA dinner. The cocktail hour commences at 6:30 at Pier 60, in New York, just like last year. The dinner will start at 7:45. The members of the dinner committee will wear a white flower, so if you have any questions or concerns, find us. We'll accommodate you.

There are buses leaving starting at 9:30 to Port Authority and Grand Central upon request. After the dinner, at 10:00 o'clock, there is a complimentary half-an-hour open bar, so you can have a free drink at the pier, last drink, if you want to.

And we're looking forward to seeing you all, and we'll all have a great time. Thank you.

MR. MARWEDEL: Thank you. I want to thank you, Boriana, for all the hard work you have done in your committee. This is the largest event the MLA puts on, this dinner.

MS. FARRAR: It's an honor. Thank you.

MR. MARWEDEL: Well, it's a lot of work; and We thank you for it.

Now we have some certificates. We have retiring board members. Forrest Booth, Don Kennedy, Janet Marshall, and Kent Roberts, if you'd come on up, we have certificates for you.

We have one for Admiral Baumgartner, who is taking over command down in Miami and is otherwise engaged, so we'll send this to him, but we are going to send one of the officers down to represent the Maritime Law Association at his change of command ceremony. He's been a big friend and supporter of the MLA, and we miss his constant interaction with us, but Fred has filled the shoes, I can tell you that.

We have retiring committee chairs: Frank DeGuilio of the Rec Boat Committee, Jonathan Spencer, Marine Insurance, Jack Scalia, Marine Torts, and Tony Whitman, Vessel Regulation.

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MR. SPENCER: Only one has stayed the course.

MR. MARWEDEL: The others had other meetings and trains to catch.

Is Charlie Schmidt here? Charlie was our chair down at Hilton Head, and he has been the financial guru for more years than either one of us want to remember, and before that, Don Kennedy, and has brought every one of our away meetings in where we've made a little money for the treasury, and we thank you for that.

I see Chet is here. Did Vince DeOrchis get back? No. Chet, if you'd come up. Mike Sturley couldn't be here, but we have something for you for the group we affectionately call the Gang of Three. Why don't you come on up here.

Chet was remarking to me that when he stepped down as president, he thought, well, that's it. I can relax now. Ten years later, you're finishing a project.

MR. HOOPER: I hope you can finish your job as president faster than I did.

MR. MARWEDEL: Me too.

We have three certificates. Each one is slightly different, because it bolds up the individual, in this case Chet, and I'll read what the board passed yesterday. I have to read it from this. That's too fancy.

In appreciation of the services of Vincent M. DeOrchis, Chester D. Hooper, and Michael F. Sturley

Whereas, Vincent M. DeOrchis, Chester D. Hooper, and Michael F. Sturley, affectionately known to their fellow members as the "Gang of Three," have worked tirelessly for most of a decade as part of the Working Group set up by UNCITRAL to negotiate a new international convention relating to the carriage of goods by sea; and

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Whereas, working with the United States Department of State, the “Gang of Three” have represented the interests of the Association, the maritime bar, the shipping and commercial interests represented by members of the Association and their country with zeal, industry, and wisdom; and

Whereas the time and effort expended has involved extensive time and travel at the expense of their normal duties and their personal lives; and

Whereas, due in large part to their efforts, the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, otherwise known as the Rotterdam Rules, was eventually signed by the United States of America; and,

Whereas, at the meeting held on May 1, 2009, the Association recommended that the United States Senate ratify the Rotterdam Rules; and

Whereas, the services of Messrs. DeOrchis, Hooper and Sturley have exemplified the highest standard of pro bono publico service and have furthered the objectives of the Association in furthering the improvement and uniformity of the maritime law;

Be it resolved, that the Maritime Law Association of the United States expresses its sincere appreciation to Vincent M. DeOrchis, Chester D. Hooper and Michael F. Sturley for their distinguished service.

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

MR. MARWEDEL: Thank you Chet.

(Applause)

MR. MARWEDEL: Last committee report, Liz Burrell, the Nominating Committee.

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MS. BURRELL: Thank you very much. As you can imagine, I wouldn't have been sitting up here all of these years unless I cared very deeply about the past, the present, and the future of this Association. There is no better way to leave than with confidence that our Association will continue to be well-managed and well-guided into the future, and to present the report of the Nominating Committee on its recommendations for candidates for various positions that this organization could not be better led.

For directors, with a term continuing until 2013, we have Dennis Minichello, Thomas J. Muzyka, Francis X. Nolan, III, and George W. Nowell. For the position of Membership Secretary, David J. Farrell, Jr.; Treasurer, William R. Connor, III; Secretary, Harold K. Watson; Second Vice President, Robert G. Clyne; First Vice President, Robert B. Parrish. For President, Patrick J. Bonner. We did not need to give much consideration to who should be the Immediate Past President.

(Laughter)

MS. BURRELL: You see him before you. With that said, I would like to know if there is a motion from the floor?

MEMBERS: So moved.

MS. BURRELL: Mr. Volk, I will recognize you.

MR. VOLK: Thank you. I move the acceptance of the report, that the nominations be closed, and that the Secretary record that the vote is unanimously in favor of the report.

MR. MARWEDEL: Do I have a second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

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MS. BURRELL: Congratulations to all of you.

(Applause)

MR. MARWEDEL: Before I turn this over to our new president, I just wanted to make a few remarks. As past presidents know, this is a very happy day and a very sad day at the same time. I've enjoyed my two years before the mast tremendously. I've met so many interesting people. I've gotten involved in projects that I don't see in my normal practice.

I have found that as I travel around and meet other organizations, they often refer to the MLA as something unique. It's kind of a model that others try to follow. They don't understand how we get so many people to volunteer so much time in the committee work, and that's really what the MLA is, the committees.

The legal profession and the maritime industry, as we know, are changing, changing faster than some of us can keep up with. The Board has been dedicated to trying to make the changes and keep the Association relevant so that it still is meaningful to all its members.

I went around to as many committee meetings as I could this week, and most of them were packed, and we feel that we are on the right course, but if you have ideas, get them in to the officers and Board.

I just want to thank a few people. My list is much shorter than the committee list, because I'm not going to thank all of the people that have helped me. Almost everybody in this room, in some way or other, has assisted me in the last two years.

First of all, I have to recognize my wife, my chief mate over there, who has been a tremendous help. There's a certain amount of stress in the job, and she has supported me throughout, and it's been wonderful. Thank you.

(Applause)

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MR. MARWEDEL: I want to thank my partners. We all know what that means. Dennis Minichello is here and Bill Ryan. I think there will be a new -- we have our firm meetings on Monday mornings, so it'll be a different tone on Monday, I can tell.

(Laughter)

MR. MARWEDEL: I want to also thank my assistant, Terri Cooper. Many of you find that if you really want to get an answer on something, you call Terri instead of me. Terri.

(Applause)

MR. MARWEDEL: I also want to thank Robin Becker, at P.C. Solutions. She gets calls from every one of us here, officers, committee chairs, and she always ends with, "Have a nice day," and I'm hoping that she has a nice day. She's been a tremendous help to us.

I also want to thank my fellow officers and Board members. These are my shipmates in what I've been doing for two years, and it's the best Board I've worked with. Everybody steps up to the plate and does their job and then some, and I really want to thank you all.

(Applause)

MR. MARWEDEL: One comment I want to make to Liz, who is going off the Board. 1992 is when Liz first came on the Board. Liz, in many respects, is the heart and soul of this organization. I've had many long conversations about issues and policies and what have you, and I never doubt for a minute that Liz has always had the best interests of the Association at heart, and I really want to thank you.

(Applause)

MR. MARWEDEL: Last, Pat is going to be our new skipper. I couldn't be more pleased. I've known Pat for a long time. He served on the Board. As Treasurer, he knows this ship of ours inside out, stem to

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stern, keel to truck. I can't think of a better person to pass on command and the stress. It's all yours.

And I would like to start a little new tradition. I understand that when other presidents leave office, they write a personal note to their successor, and I've done it. It's something you can read later. And I'd like to be the first person to address you as Mr. President.

MR. BONNER: Thank you very much.

(Applause)

MR. BONNER: Continuing the shipping metaphor, I'm sure some of you may be thinking that when a Navy guy relieves the watch from a Kings Pointer, things are going to go downhill pretty quickly.

(Laughter)

MR. BONNER: Well, that's not going to happen. It's not true anyway. I'm going to have Warren here to help steer this big organization in the right direction, and I have somebody on the other side of me to give me some propulsion.

(Laughter)

MR. BONNER: My first act as president, of course, is going to be to thank Warren on behalf of the MLA for two great years as president and for a lot of years before that of service. He did a great job. Warren is an organization guy. He wants to know where everything is so he can get at it readily. And this organization has always had a problem with this. We have so many people involved and doing different contracts, different ways. We didn't know where they were. Warren has gotten them all together. They're all readily available online.

I think his biggest accomplishment was to make the web page more accessible to our members. He set up the Breaking News section, and we have a lot of good information posted there on piracy and other subjects that I think you'll find very interesting.

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He's continued the efforts to make the Association more relevant to its members. He set up the Government Lawyers Committee, he set up a subcommittee for personal injury lawyers, and he's also nurtured the In-House Committee, which was set up under Liz to be a very vibrant committee.

I will let Cal talk about his international activities, but I would like to present Warren with a certificate.

This says,

The Maritime Law Association of the United States presents this testimonial of appreciation to Warren J. Marwedel, 2008 to 2010. The Association takes this means of recognizing his able and successful leadership, his constructive efforts, and his outstanding contributions to the Maritime Law Association of the United States and to the field of maritime law.”

Congratulations.

(Applause)

MR. BONNER: I'd like to call upon Calvin Lederer, Acting Judge Advocate General and Chief Counsel of the United States Coast Guard, to talk about some of Warren's international activities.

MR. LEDERER: Thank you, Pat. It's a pleasure to be here, on behalf of the Commandant of the Coast Guard. I'd like to first say that over the last several years, the relationship or the bonds between the Coast Guard and government lawyers and the MLA have deepened, and bonds are not so much between organizations as much as between people, and the deepening has been due, in very large measure, to all that Warren has done during the last two years, building on the great works of Liz Burrell, and so first let me begin by saying that.

Warren has been an actor on the international stage, as well, and rather than me relating it extemporaneously, I have an award, Warren, if I can ask you to stand and join me here. And Pat, Mr. President, if I may

excerpt from the rather lengthy citation, given the hour, I will summarize, if I can.

This is the Meritorious Public Service Award awarded by the Commandant of the United States Coast Guard to Mr. Warren J. Marwedel. In his role as president, Mr. Marwedel greatly strengthened the bond between the Coast Guard and maritime, legal, and regulated communities through his guidance of the Ad Hoc Committee on United States Coast Guard Relations, which included a unique meeting of all stakeholders to discuss domestic pollution and insurance. Mr. Marwedel encouraged active participation by Coast Guard attorneys in Maritime Law Association events, and his efforts had a tremendous impact on enhancing public participation in governmental processes. During his tenure, Mr. Marwedel established a new MLA committee for government attorneys, providing a much-needed forum for U.S. government attorneys to address pressing issues.

And now to the international stage. Mr. Marwedel served as an invaluable advisor to the United States delegation to the International Maritime Organization's Legal Committee. His sage advice and knowledge of maritime and international law were critical in addressing emerging issues of concerns with the global community, including development and adoption of the protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, which he just got back from just at the end of last week with Fred Kenney. Mr. Marwedel was also a key participant in the negotiation of the UN Convention of Contracts with the International Carrying of Goods, Wholly or Partly by Sea, the Rotterdam Rules, ensuring incorporation of the United States maritime industry interests in the resulting convention.

Mr. Marwedel's positive outlook, camaraderie, and tireless efforts were essential in bringing together a multitude of parties across the maritime spectrum to resolve critical issues and to act in common cause.

Mr. Marwedel's exceptional professionalism and sense of public service are most heartily commended and are in keeping with the highest tradition of the United States Coast Guard and the United States of America.

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Signed on the 4th day of May, 2010, Bill Baumgartner, Rear Admiral, U.S. Coast Guard, the Judge Advocate General.

(Applause)

MR. LEDERER: And if I can, on behalf of the Commandant, pin this on your lapel to properly recognize this award, with an appropriate rosette you can wear tonight.

(Applause)

MR. MARWEDEL: I just wanted to say thank you to Cal and to Bill and Fred. I really have enjoyed working with you on all these projects.

MR. BONNER: Warren, on behalf of the Association, I'd like to present you with a gift to recognize your dedication and hard work. I also have to mention to everybody that Marshall Keating taught me well. While you're opening it, I'll just give a little explanation. I was negotiating a price with the designer, and I promised him that I would give him a plug, and maybe he'd get some future business, and he remembered that in the price. So if you want something similar to this, it's Brian Bergeron, of the Rhode Island School of Design, and now he has the template for making the Silver Oar of Admiralty.

(Applause)

MR. BONNER: I'm honored to be your 47th president. When Jim Moseley asked me to be secretary of the Navigation and Coast Guard Committee all those years ago, I never realized I would stick with it. I never realized how much I would enjoy it, but it's been very interesting. I've enjoyed just about all of it, from writing amicus briefs in oil pollution criminal matters to negotiating with the Coast Guard on whether a Coast Guard report is admissible, and to balancing the books for eight years. I've enjoyed it all, and I tried to think why. I could think of three reasons that jump out. First is working with all of you. We're all volunteers. Nobody is in it for the buck, and everybody's very helpful. They want to do what they can, from past presidents all the way down to somebody giving committee talks. That's number one.

Number two, I've had the support of my firm. They've been very good. They stood behind me, and I want to thank all of them for supporting me. I wouldn't be here if you weren't so supportive. Guys and girls, the bad news is two more years of nonbillable time.

(Laughter)

MR. BONNER: Finally, I have to thank my wife. She has sat through numerous meals, meetings, dinners, where the chief topic of conversation was OPA 90, Rotterdam Rules, Limitation Act. Maureen, I've got to take my hat off for you. I would never have done that.

(Applause)

MR. BONNER: Along with Freehill, you're on the hook for a little longer too.

(Laughter)

MR. BONNER: Ending up, looking ahead, one thing I would like to promote is camaraderie. I think that is the glue that joins us all together. The MLA is going to put out the CLE. We're going to be pumping out the information. You're going to use it as a network for referral, but I think we also ought to look at the social aspects. The getting together more, meeting with each other at Brady's or somewhere other than at the courthouse or at a deposition room. That's what I would like to try to foster here, and I think it should be natural. We all have a lot in common. We all chose to be admiralty lawyers. That's what we do all day. Nobody forced us, that's what we do, and I'd like to really foster that and bring on that camaraderie.

So I hope that I see you in Houston. I hope you plan a vacation to come to Hawaii. Talk to your tax adviser. Maybe that would be beneficial. And I also hope that you all have a good time at the dinner tonight.

Now, unless there's any new business, traditionally, we call upon the senior past president to make a motion, and I'm going to call upon Ken.

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MR. VOLK: Thank you, Pat. After a very informative and interesting meeting, I move we adjourn.

MR. BONNER: Is there a second?

MEMBERS: Second.

MR. BONNER: All in favor?

MEMBERS: Second.

MR. BONNER: Motion to adjourn carried.

(Meeting adjourned)

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

SPRING 2010

The Committee met on May 5th, 2010 at 40 Wall Street, New York, New York, thanks to the kind hospitality of CNA/MOAC. Committee Chair Jonathan S. Spencer of New York welcomed all guests and members.

Newsletter subcommittee chair Gene George introduced the committee's Spring 2010 newsletter. Our newsletter has been posted on the Committee home page on the MLA web site and likely is of interest to a wide variety of MLA members since the lead article, by Roger Phillips of TecnoRisk in Seattle, deals with Medicare holdbacks and the wide-reaching provisions of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. The article contains a detailed analysis of the regulations and procedures applying to injury and illness claims and is a must-read for people involved in this area of our industry.

The newsletter also contains a report on a recent UK case, *Global Process Systems Inc v. Syarikat Takaful Malaysia Berhad*, involving an inherent vice defense raised by underwriters in response to a claim on a cargo policy on a mobile offshore production unit arising from the unit's legs breaking while being transported on a barge from the Gulf of Mexico to Malaysia. The question is not settled because the case is going to appeal in July 2010.

The newsletter further deals with the usual varied array of domestic cases, spotted and reported on by various committee members whose efforts we always appreciate. As always, we extend our thanks to Gene and particularly to his legal assistant, Brenda Marmol, for their sterling work in producing an ever more attention-getting product.

Gene went on to describe some work that he has been doing on behalf of an Ohio insurer, researching some 2009 amendments to the Canadian Insurance Companies Act. Mike Bell, then President of the CMLA, first drew the committee's attention to these developments a couple of years ago but the regulations seem to be even wider-reaching

than then envisaged and potentially to impact on some area of the activities of foreign insurers transacting business in Canada, possibly requiring them to become licensed there.

Changes to the Canadian Insurance Companies Act (“ICA” or “Act”) that took effect January 1, 2010, require a foreign insurer that is found to be “insuring in Canada a risk” to register with the Office of the Superintendent of Financial Institutions Canada (“OSFI”) and comply with numerous reporting and financial responsibility requirements, including minimum continuing capital and surplus requirements. These changes involve what business foreign insurers licensed in Canada have to report as ‘Canadian business’ to OSFI, and accordingly, meet the OSFI requirement to vest assets in Canada in respect of those risks. The federal regulatory focus with respect to foreign insurers will be effectively changed from the location of the risk to the location of the business activities of the insurer.

OSFI issued a Notice dated July 24, 2009, stating that the amendments removed a previously existing exclusion of marine insurance from its regulation. The new requirements appear to be subject to the limitations contained in an OSFI Advisory entitled “Insurance in Canada of Risks,” a revised version of which was issued in May of 2009. The revised advisory provides nine basic indicia that can be used to determine whether a foreign insurer is “insuring in Canada a risk.” The relevant indicia occur when a foreign insurer or reinsurer:

- a) promotes insurance products in Canada;
- b) directly solicits a person in Canada to obtain coverage;
- c) receives in Canada a request for coverage;
- d) negotiates from Canada the terms and conditions of coverage;
- e) decides in Canada to bind coverage;
- f) communicates from Canada an offer to insure;
- g) receives in Canada the acceptance of the offer to insure from a policyholder;
- h) receives in Canada the premium;
- i) interacts in Canada with a policyholder regarding coverage (including handling claims).

OSFI has indicated that a foreign insurer is “insuring in Canada a risk” when its business model includes:

Scenario 1

Two or more of the activities outlined in subparagraphs 2(b) to (h) of the advisory.

Scenario 2

Any one of the activities referred to in subparagraphs 2(b) to (h), and both of the activities referred to in subparagraphs 2(a) and (i).

Scenario 3

Reaching agreement on most or all of the material terms and conditions of coverage during the course of negotiations in Canada.

According to the advisory, OSFI considers that a foreign insurer or reinsurer is not “insuring in Canada a risk” if its business model encompasses only one of the activities referred to in the above list. Insuring risks from outside Canada is not banned.

The picture is complicated by the likelihood of some provinces, particularly British Columbia, enacting their own regulations in addition to the national legislation. We will continue to track this and Shelley Chapelski of the Vancouver office of Bull Hauser & Tupper has promised to assist.

Jonathan Spencer next delivered an update on current federal legislative developments affecting marine insurance on behalf of Joe Grasso of Philadelphia and New York, the incoming committee chair. Joe was absent, attending the San Francisco Board of Marine Underwriters event on the West Coast.

On December 11th 2009 the House passed their financial regulatory reform package, Wall Street Reform and Consumer Protection Act of 2009. Among its many provisions, highlights include the creation of a Consumer Financial Protection Agency (CFPA), new regulation of derivatives markets, systemic risk regulation measure, new restrictions on credit ratings agencies, the creation of a Federal Insurance Office, and a hedge fund registration requirement. The act also includes the text of

the Nonadmitted and Reinsurance Reform Act, passed by the House in September 2009.

In late April 2010 the Senate Democrats began procedural negotiations in an effort to bring Senator Dodd's Restoring American Financial Stability Act of 2010 to the floor. On Wednesday April 28th, the Republicans agreed to the motion to proceed on debate. It is anticipated that the bill will be on the floor for a couple of weeks.

As in Dodd's previous version of the legislation, the act would establish an Office of National Insurance in the Treasury Department to monitor the insurance industry and coordinate international insurance issues. The legislation contains the language from the Nonadmitted and Reinsurance Reform Act passed by the House in September. As previously reported, this act would simplify reinsurance regulation across states, establish a common system to allocate and remit surplus lines premium taxes, and allow risk managers to access surplus lines more directly.

Republicans recently circulated a 20-page summary of a bill that could be an alternative to the measure by Dodd. The summary language notes the establishment of an Office of National Insurance and the streamlining of surplus lines and reinsurance regulation.

If a financial reform law is passed it appears there will be a Federal Insurance Office. The role and authority of the office will be determined through the reconciliation process of the House and Senate versions of the bill, and any related floor amendments.

The House passed H.R. 2554 – the National Association of Registered Agents and Brokers Reform Act of 2010 ("NARAB II") on March 3rd 2010. The legislation is designed to streamline non-resident insurance agent and broker licensing. Similar legislation passed the House in September 2008 but never attained a Senate vote.

The bill establishes a national organization, NARAB, which producers are permitted to join. NARAB would be responsible for establishing one set of standards for licensing, continuing education, and other insurance

producer qualifications that could be adopted and applied on a multi-state basis for states in which they do business.

The legislation allows states to continue to license, supervise, discipline, and establish licensing fees for insurance producers, as well as to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices. There is no current indication that the Senate will take any more interest in this bill than they did in the 2008 one.

Cargo subcommittee chair John Ryan of New York gave a report on work accomplished by a joint working group of AIMU Technical Committee and MLA Marine Insurance Committee members, preparing a comparison of the new London Institute Cargo Clauses with American Institute cargo clauses. Their work product is available on the Committee home page on the MLA web site and at the foot of the Forms page on AIMU's website at <http://www.aimu.org./formsmenu.html>

Next, guest speaker Willa France, of New York, spoke about a burgeoning form of dispute resolution called 'Collaborative Law and Practice'. Collaborative Law or Practice is a relatively new ADR process finding growing acceptance in resolving commercial disputes, particularly those in which the parties seek to maintain long-term relationships. It is a non-adversarial, fully transparent process in which the parties themselves, with the assistance of their attorneys, contract to negotiate a resolution based on their interests, rather than legal positions. Wasteful adversarial proceedings and processes are eliminated altogether and the parties may not resort to the courts during the process. A resolution is neither imposed (as in court or arbitration) nor based on legal strengths and weaknesses (as in mediation). Importantly and as a strong inducement to settlement, attorneys must withdraw from further representation of their clients in any subsequent adversarial proceedings should the process fail to lead to settlement.

The process appears to have started as a means to resolving family law matters but is gaining growing acceptance as a means to resolving commercial disputes, particularly where the parties desire to preserve a

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continuing relationship. Willa prepared a detailed PowerPoint presentation which is available on the Committee's home page.

Our second guest speaker was Dr. Svante Johansson, the Swedish state average adjuster and also Professor of Maritime and Transport Law at the School of Business, Economics, and Law of the University of Gothenburg, in Sweden. Svante talked about the Rotterdam Rules and particularly how they are going to complicate the adjustment of General Average, by introducing the concept of proportional fault. However, it is anticipated that some insurance solution will be devised.

Perhaps even more challenging is the question of how much more complicated collision settlements will become, because of both the introduction of proportional fault and the elimination of the error in navigation defense.

Our third and fourth speakers were visitors from the UK, speaking on different aspects of piracy. Chris Dunn, managing partner of Waltons & Morse, spoke about the BUNGA MELATI DUA case, believed to be the first ransom case heard in the UK since *Hicks v. Palington* in 1590, in which Mr. Justice David Steel held that the payment of ransom to Somali pirates is legal under UK law.

However, the situation there is becoming complicated, as it has become here, by some pirate organizations being linked to Al Shabab, a terrorist organization, thus bringing the payment of ransom under the aegis of OFAC and its UK equivalent. A group of MLA members is monitoring this situation from the US regulatory point-of-view and updated information will be posted on the website from time to time.

Chris's expanded presentation takes the form of a PowerPoint presentation which we have added to the committee home page.

Following Chris's address was James Wilkes of UK-based Gray Page, a company specializing in maritime crime and fraud investigations, security, intelligence gathering and counter terrorism and hijack-

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ing and piracy. James spoke about his role as a crisis negotiator and his experience negotiating with Somali pirates. A striking statistic is the period that ships are spending in Somali waters as negotiations proceed has increased to 60-100 days.

The meeting closed at 11:50 a.m., some sixty members and guests having been in attendance.

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FORMAL REPORT OF THE COMMITTEE ON YOUNG LAWYERS

Chair: Alexander M. Giles
Vice-Chair: Carolyn Elizabeth Bundy
Secretary: Norman M. Stockman

Spring 2010

Committee Liaison Program

We have been asked by MLA President Warren Marwedel to re-institute a program that has not been in practice for some time – the Committee Liaison program. In short, the theory behind the Committee Liaison program is that we would assign young lawyers to serve as liaisons on each of the MLA's standing committees. The obvious goal of this program is to increase the flow of communication between the standing committees and our Committee, which hopefully will lead to opportunities for our members in those standing committees as well as allowing for the mobilization of our membership to assist in projects being undertaken by the standing committees. I have asked our Vice Chair, Betsy Bundy, to take responsibility for organizing these efforts.

Current Ongoing Projects

The MLA Marine Torts and Casualties Committee, led by its Secretary Lisa Reeves, is in the process of updating the MLA's Limitation of Liability Statistical Analysis Study that has been updated on several previous occasions, most recently in 1996. Based on the last update from the Committee, the following YLC members have volunteered for the project: Stephanie Espinoza, Michael Gerrity, Brian McEwing, Art Severance, Laszlo Szabo, and Patrick Ward.

The Secretary of the MLA, Hal Watson, requested the assistance of the Committee for a project to research and compile all of the Resolutions passed by the Association since its formation in 1899. The work has recently just begun and we already have the following members hard at work: Anthony Banker, Patricia O'Neill, Joseph Peck, Luis Raven, and Patrick Ward.

Recently Completed Projects

The YLC would like to recognize and thank Alberto Castaner-Padro, Euyelit Moreno-Parades, Scott Sheffler, Jeff Vogel and Patrick Ward for generously providing significant time and effort in preparing the case summaries for the Marine Ecology and Maritime Criminal Law newsletter.

New Projects

There are two new projects that have been brought to our attention for which we will be soliciting volunteers at the upcoming meeting: MLA Practice and Procedure Committee – Joshua Force, the Chair of the Practice and Procedure Committee, has recently requested the assistance of the Young Lawyers Committee to provide volunteers for a project that will be surveying the various federal District Courts around the country to determine if they have adopted some form of the MLA's Model Local Admiralty Rules (MLAR).

The Membership Secretary of the MLA, David Farrell, has requested the assistance of the Committee to continue with its efforts on locating e-mail addresses for any remaining MLA members without an e-mail address on file with the MLA.

Interested volunteers should contact Alex Giles at agiles@semmes.com, who will either be coordinating these assignments or will put the interested volunteers in touch with the appropriate individuals.

Call for Projects

The standing committees are requested to let us know how we can help with your projects. If you have projects in need of research or have writing opportunities that are well-suited for younger lawyers, please keep our committee in mind. Additionally, we can usually find a YLC member to assist with staffing your meeting (handling CLE paperwork, sign-in sheets, handouts, and assisting with presentation set up, etc.).

Publication Opportunities

Do you have any war stories from your practice you wish to share with others? Do you think you have a sense of humor? Consider submitting your written piece for consideration for inclusion in the Benedict's Quarterly Maritime Bulletin. You may write to Phil Berns at pberns@embarqmail.com.

Proctor Status

Any Associate member of the MLA who has been a member of the MLA for four years or more is eligible to apply for Proctor status with the MLA. The advantages of Proctor status are numerous, not the least of which is that a member cannot serve as a committee chair, vice-chair or director unless s/he is already a Proctor or Non-Lawyer member. Proctor applications may be obtained from the MLA Membership Secretary or may be downloaded from the MLA website (www.mlaus.org) in the "Membership Forms" section.

YLC Membership List on Website

We would like to clean up the Membership List that appears on the Young Lawyers page of the MLA website. In reviewing the list, which is generated by the selections made by each of you in your own profiles, it is apparent that some individuals who are currently identified as a "Voting" member of the Committee probably should be a "Listening" member instead, and there are other individuals where the opposite should be the case.

Regardless, we will be asking everyone to review their profiles and to make the necessary changes to help us identify the core, active members of our Committee.

Alex Giles, YLC Chair
Semmes, Bowen & Semmes
Baltimore, Maryland
agiles@semmes.com

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Betsy Bundy, YLC Vice Chair
Freehill Hogan & Mahar
New York, New York
bundy@freehill.com

Norman Stockman, YLC Secretary
Hand Arendall
Mobile, Alabama
nstockman@handarendall.com

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

Held at the offices of Winston & Strawn, Washington, D.C.
1700 K Street NW
12th Floor
Saturday, March 13, 2010
8:30 a.m.

The March 13, 2010 meeting was called to order by President Warren J. Marwedel at 8:00 a.m. In addition to President Marwedel, the following officers also were present:

Patrick J. Bonner, First Vice President
Harold K. Watson, Secretary
Robert G. Clyne, Treasurer
David J. Farrell, Jr., Membership Secretary
Lizabeth L. Burrell, Immediate Past President

The following directors also were present:

Forrest Booth	Donald J. Kennedy
Janet Marshall (by telephone)	C. Kent Roberts
Kimbley A. Kearney	Barbara L. Holland
Joshua S. Force	Bradley A. Jackson
James F. Moseley, Jr.	Arthur J. Volkle, Jr.

In addition, the following members and guests were present at the invitation of the President:

James R. Moseley, Sr.	Thomas S. Rue
James W. Bartlett, III	Calvin Lederer
John Paul Jones	Allen Black

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the November 4, 2009 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the November 4, 2009 meeting of the Board of Directors will be included in the Spring 2010 PROCEEDINGS.

Mr. Watson reported that Messrs. Chester D. Hooper and David Nourse have agreed to assume responsibility for editing the MLA Report.

Mr. Watson also reported that the expense of printing the Spring 2009 PROCEEDINGS was approximately double what it had been for the Fall 2008 PROCEEDINGS. This was to be expected because the Spring 2009 PROCEEDINGS were extremely lengthy as a result of the debate on the Rotterdam Rules. Mr. Watson has solicited a comparative printing bid to see if this cost can be reduced in the future.

Mr. Watson is still awaiting information to have a podium fall made. As soon as this information is obtained, the purchase will proceed.

TREASURER'S REPORT

Mr. Clyne reported that the Association's finances remain in good shape. There is approximately \$25,000 less cash on hand than at the same time in 2009, but this is attributable to factors that can be accounted for, i.e., the fact that the money from the account for the 2009 fall meeting has not yet been transferred to the Association's general account, payment of the auditors in a different quarter than last year, and late issuance of dues invoices.

The fall meeting at Hilton Head was a financial success, ending up in the black. Requests for refunds are being reviewed, but this will not materially affect the result.

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The dinner in conjunction with the May meeting will again be held at Pier 60. This is the only major upcoming expense. The price of the dinner has been raised by \$5.

The question of whether it might be possible to charge dues and other payments on credit cards was discussed. Credit cards are not currently accepted for these payments because it would entail a charge of 2-3%, which would have a significant impact on Association revenues.

Mr. Clyne then proposed a resolution to establish guidelines with respect to refunds to members who are unable to attend a meeting for which there is a registration fee. On motion duly made and seconded, the Board unanimously approved the guidelines.

Mr. Clyne also expressed concern about the pace of dues collection, and the number of members who are in arrears with regard to dues. President Marwedel will ask Robin Becker to generate a list of these members with a view to having Board members contact them to urge them to pay their dues. Concern was expressed that members who fall behind in their dues may be lost as members. The Board reviewed the issue of unpaid dues and approved a program to get members back to the active membership category.

MEMBERSHIP SECRETARY'S REPORT

Mr. Farrell delivered the Membership Secretary's report. The following application for reinstatement to Proctor status has been received:

David P. Buhler, New Orleans, LA

In addition, the following applications for Associate membership have been received:

Olaf Aprans, Seattle, Washington
Sara Banks, Houston, Texas
Bradford Bowman, Portland, Maine
William D. Carey, San Diego, California
Sirena Perez Cassidy, Hagata, Guam

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Ruth A. Colvin, Houston, Texas
Stephen B. Crain, Houston, Texas
Justin E. Crawford, Hackensack, New Jersey
Mark A. Dowdy, Mobile, Alabama
Aaron T. Duff, Hackensack, New Jersey
Drew Gilbert, Houston, Texas
Michael A. Golemi, Houston, Texas
Adam Harrison, Norfolk, Virginia
Nathaniel Hussey, Matinicus, Maine
M. Robb Hyde, District of Columbia
Joshua A. Klarfeld, Cleveland, Ohio
Alan J. Meche, Lafayette, Louisiana
John J. Michael, Houston, Texas
Justin D. Mitchell, Houston, Texas
Kathleen Nelson, Seattle, Washington
Christopher W. Ogle, Houston, Texas
Scott A. Richards, Tampa, Florida
Anthony J. Salerno, Jr, New York, New York
Jennifer K. Smith, Seattle, Washington
Josette Ferrazza Spivak, Wilmington, Delaware
Carlos M. Tamez, Houston, Texas
Chris Verducci, Houston, Texas
A. Grady Williams, IV, Mobile, Alabama
Marc A. Zlomek, Seattle, Washington

The following applications for Law Student membership have also been received:

Ngosong Fonkem, West Virginia University College of Law
Robyn Monaco, Rutgers Law School
Georgina M. Nemecek, Rutgers Law School

On motion duly made and seconded, all of these applications were approved.

Mr. Farrell also regretfully reported the deaths of the following Members:

Frank Loomis of Miami, Florida; Life Member, 1969
Herbert B. Halberg of New York, New York; Life Member, 1965
Robert W. Mullen of New York, New York; Life Member, 1962
Henk van Hemmen of Red Bank, New Jersey; Non-Lawyer, 1994
Richmond M. Eustis of New Orleans, Louisiana; Proctor, 1973

He also noted with sadness the death of Carol Ann DeGiulio, wife of Board member Frank P. DeGiulio. A moment of silence was observed in respect of the departed.

It was noted that there will be approximately 400 members reaching Life Member status in the next five years. This attrition of dues paying members may be offset by new members, and the need to continually remind the membership to propose new members was emphasized.

ASSOCIATION MANAGEMENT

Liaison and Special Committees

President Marwedel announced that the new Government Counsel Committee, chaired by R. Michael Underhill, will be meeting in Washington on the Tuesday before the General Meeting in May in conjunction with the meeting of the Committee on Marine Ecology and Maritime Criminal Law and the Committee on Regulation of Vessel Operations, Safety, Security and Navigation. The first project to be undertaken by the Government Counsel Committee will be a review of insurance issues and letters of undertaking.

Special Appointments

President Marwedel announced that he has named Immediate Past President Burrell as Association Archivist. In this role, Ms. Burrell will undertake to collect documents related to the Association's activities from past officers.

Nominating Committee

The Board was reminded that every member is free to submit nominations for new Board members, and President Marwedel encouraged Board members to do so.

Pacific Admiralty Seminar

Mr. Booth presented a proposal for the Association to take over the sponsorship of the Pacific Admiralty Seminar, which is currently sponsored by the Bar Association of San Francisco. The seminar takes place in even numbered years, and normally takes place the first week of October to coincide with Fleet Week in San Francisco. The proposal envisions that the Maritime Law Association would sponsor the seminar, and hold the Fall Meeting in conjunction with the seminar every four years. On motion duly made and seconded, the Board approved the concept of taking over the sponsorship of the seminar, and authorized Mr. Booth to commence negotiations to finalize such an arrangement for further consideration by the Board.

American Maritime Law Foundation

It was reported that there have been discussions with Frank Wiswall regarding the Association taking over the American Maritime Law Foundation. The Foundation is a 501(c)(3) corporation. President Marwedel and Mr. Watson will confer with a tax attorney to determine whether there would be any advantages for the Association in doing this.

MLA Fall 2010 Meeting

The Fall Meeting of the Association will take place November 10-13, 2010, and will be preceded on Wednesday, November 10 by the University of Texas Admiralty and Maritime Law Conference.

MLA Fall 2011 Meeting

In the absence of Joanne Zawitoski, chair of the Fall 2011 Meeting, Mr. Bartlett reported on plans being made to hold this meeting at the Marriott Ilihani Resort and Spa at Ko Olina on the island of Oahu. The plan is for the meeting to take place in early December to coincide with the 70th anniversary of the attack on Pearl Harbor. There was a general consensus that if possible the meeting should take place immediately before December 7, so as to avoid being too close to Christmas.

BOARD SUBCOMMITTEE REPORTS

Finance

The plan to have advertising on the website was discussed. The advertising will appear on a separate section of the website so members accessing the website would not be required to view the ads. It was suggested that if the ads were categorized by the type of service provider, this could provide a service for members seeking to engage a service provider in addition to providing additional revenue. The possibility of having ads in the dinner programs was also suggested. President Marwedel stated that he would appoint an advertising committee to explore these ideas more fully.

Mr. Clyne also reported that he would have a budget circulated with the next Treasurer's Report so that this could be considered at the May Board meeting.

Membership

The new consolidated membership form was presented. The form will be placed on the website, and the website section will be changed to read "Forms" because it will include forms other than membership applications.

Website

Professor Jones described the Association's relationship with PC Solutions and Intercounsel, who maintain the servers. He has also

discussed updates and work he and the Website and Technology Committee are doing for future planning of the website.

Professor Jones reported that the Hawaii documents are now in digital form, but that there is still no practical way to search the documents. The University of Michigan has a search engine that is available to participating academic institutions, but this is not presently available. Hopefully, an available search engine will become available in the future.

President also reported that the upgrade that the Board had previously approved came in slightly less than the \$9000 budget.

Ad-Hoc Reports

Amicus Curiae Requests

Numerous Board members commented on the excellent job Ms. Burrell did in writing the amicus curiae brief on behalf of the Association in *Shipping Corp. of India, Ltd. v. Jaldhi Overseas Pte Ltd.*

Special Committee Reports

Coast Guard Relations

President Marwedel also reported that after meeting with insurance industry representatives to discuss general problem areas regarding handling of oil spills, the Coast Guard broadened the discussion to include some specific cases. The Coast Guard's open approach has received positive feedback from industry for these efforts, and President Marwedel is exploring possible ways to expand the program to other governmental agencies.

American Bar Association

President Marwedel reported that the Association's representative to the ABA, Richard Leslie, shepherded a resolution through the ABA urging the Senate to ratify the Rotterdam Rules.

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With regard to the Rotterdam Rules, Mr. Volkle reported that the American Waterways Operators and its members are generally opposed to the application of these rules to domestic carriage, and would prefer to continue to operate under the Carriage of Goods by Sea Act, which is invariably incorporated by contract into bills of lading for such carriage. Mr. Volkle was asked to discuss this with the Committee on Carriage of Goods.

RECENT ASSOCIATION ACTIVITIES AND PROJECTS

16th Annual John R. Brown Admiralty Moot Court Competition

President Marwedel reported that he had served as a judge at the recent John R. Brown Admiralty Moot Court Competition held in New Orleans in February, and that the briefs were of very good quality. The briefs will be posted on the website along with the names of the winners.

INTERNATIONAL ACTIVITIES

President Marwedel reported that the IMO Legal Committee is going to three meetings every two years.

He also reported that he had appointed Mr. Rue to chair a committee to look at the Association's relationship with the CMI. Messrs. Kennedy and Jackson will also serve on this committee. The committee was asked to look at the history of the CMI and its work, its relevance, financial issues, and future participation of the MLA in the CMI. Mr. Rue reported on those topics and the President will continue discussions with the CMI about these issues.

There being no further business to come before the Board, the meeting was adjourned.

Respectfully submitted,

Harold K. Watson, Secretary

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

Held at the Association of the Bar of the City of New York
42 West 44th St.

on

Thursday, May 6, 2010

at

9 a.m.

The May 6, 2010 meeting was called to order by President Warren J. Marwedel at 9:00 a.m. In addition to President Marwedel, the following officers also were present:

Patrick J. Bonner, First Vice President
Robert B. Parrish, Second Vice President
Harold K. Watson, Secretary
Robert G. Clyne, Treasurer
David J. Farrell, Jr., Membership Secretary
Lizabeth L. Burrell, Immediate Past President

The following directors also were present:

Forrest Booth	Donald J. Kennedy
Frank P. DeGiulio	Barbara L. Holland
Janet Marshall	C. Kent Roberts
Robert B. Hopkins	Kimbley A. Kearney
Joshua S. Force	Bradley A. Jackson
James F. Moseley, Jr	Arthur J. Volkle, Jr.

In addition, the following members and guests were present at the invitation of the President:

Charles E. Schmidt	Michael K. Bell
Joanne Zawitoski	

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the March 13, 2010 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the March 13, 2010 meeting of the Board of Directors will be included in the Spring 2010 PROCEEDINGS.

Mr. Watson reported that a different printer has been selected for the Fall 2008 PROCEEDINGS. This should save the Association in excess of \$1000 per edition.

Mr. Watson has received a layout for a new podium fall, and is proceeding to purchase this item.

Mr. Watson also reported that former president Chester D. Hooper and David A. Nourse have agreed to serve as co-editors for the MLA Report. Mr. Watson will solicit committee newsletters to include in that publication.

TREASURER'S REPORT

Mr. Clyne reported that the Association has approximately \$550,000 in cash and investments. However, this figure is inflated, because a payment will be made shortly to Pier 60 for the dinner. There are 885 people registered for the dinner, which is a good turnout.

Dues collection remains sluggish, with approximately \$202,000 collected out of a total of \$360,000 billed. The collection efforts undertaken by the Board has shown good results, but the Board was asked to follow up and make sure that people who indicated that they were going to pay in fact do so.

The dues collection efforts have resulted in updating of numerous addresses. Historically, about 10% of the emails sent by PC Solutions are returned, and of these 20-30 are the result of members not providing current email addresses, the rest being technical problems.

[15862]

With the upcoming election of a new Treasurer and the change of personnel on the resort/convention committee, Mr. Clyne proposed changes to the signatories on the Association bank accounts. In particular, Mr. Clyne suggested that the President, the new Treasurer and the immediate past Treasurer be the named signatories on all of the bank accounts and that, in addition, Charles Schmidt, Joanne Zawitowski and Kim Kearney be named signatories on the Association's convention accounts. On motion duly made and seconded, the Board of Directors approved the following changes to the signatories on the MLA bank accounts: 1) That the President, Patrick J. Bonner, the new Treasurer, William R. Conner III and the former Treasurer, Robert G. Clyne be named as signatories on HSBC bank account nos. 005-77790-9 (MLA Operating Acct.), 00577577-9 (MLA Dinner Acct), 641-46985-3 (Convention Money Market Acct) and 641-73054-3 (Convention Checking Acct.) and that Charles Schmidt, Joanne Zawitowski Fernandez and Kim Kearney be named as additional signatories on bank account nos. 641-46985-3 and 641-73054-3 and, further, that the Secretary, Treasurer and Mr. Clyne be authorized to draft and execute the necessary corporate resolutions and other documents necessary to accomplish the foregoing.

On motion duly made and seconded, the Treasurer's report was approved.

MEMBERSHIP SECRETARY'S REPORT

Mr. Farrell delivered the Membership Secretary's report. The Committee on Proctor Admissions has recommended the following ten persons for Proctor status:

Matthew J. Bauer, Mobile, Alabama
Ryan C. Donlon, San Francisco, California
Don T. Evans, Wilmington, North Carolina
Morgan J. Gray, Quincy, Massachusetts
David C. Hannan, Mobile, Alabama
Paul T. Hofmann, New York, New York
Kevin McGee, Philadelphia, Pennsylvania

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Colin A.B. McRae, Savannah, Georgia
David H. Sump, Norfolk, Virginia
George K. Walker, Winston-Salem, North Carolina

In addition, the following 33 applications for Associate membership have been received:

Grace Hae Woen Bae, New York, New York
Vijay Bhagwati, New York, New York
Laura Block, New York, New York
Thomas M. Brown, Bremerton, Washington
Dane C. Bruun, Corpus Christi, Texas
Casey D. Burlage, New York, New York
Seth P. Buskirk, Wilmington, North Carolina
Matthew J. Cowan, New York, New York
Patrick F. Flanigan, Swarthmore, Pennsylvania
Maria Jorgelina Foglietta, New York, New York
Geoffrey W. Gill, Los Angeles, California
J. Clifton Hall, Houston, Texas
Chad T. Kauffman, Miami, Florida
Susan Lee, New York, New York
Ira Leesfield, Miami, Florida
Richard A. Lidinsky, Washington, D.C.
Ryon L. Little, Miami, Florida
John T. Marin, San Diego, California
Jules V. Masee, Tampa, Florida
Eric J. Matheson, New York, New York
Peter H. Oppenheimer, Washington, D.C.
Frederick M. Robinson, Seattle, Washington
Dawn L. Serafine, Norfolk, Virginia
Robert Shababb, Jersey City, New Jersey
Maryann C. Shirvell, San Diego, California
Janice K. Smith, New York, New York
Michael E. Stern, New York, New York
Jonathan D. Stoian, New York, New York
Robert E. Sumner, IV, Charleston, South Carolina
Mark A. Sylvester, Miami, Florida
Laszlo M. Szabo, New York, New York

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Gina M. Venezia, New York, New York
Lauren B. Wilgus, New York, New York

The following two applications for Law Student membership have also been received:

M. Andrew Boran, University of Richmond
Guillermo Flores, Jr., Florida A&M University

In addition, the Committee on Non-Lawyer Nominations has recommended the following two persons for Non-Lawyer membership:

Mel Causer, Houston, Texas
Bryan C. Johnson, Manvel, Texas

On motion duly made and seconded, all of these applications were approved.

Mr. Farrell also regretfully reported the deaths of the following Members:

Donald B. Allen, Life/Proctor 1949, Pleasantville, NY
Carlyle Barton, Jr., Life/Proctor 1954, Baltimore, MD
Henry E. Engelbrecht, Non-Lawyer 1993, Bedminster, NJ
Hon. Morris E. Lasker, Judicial 1973, D. Mass.
George W. Renaudin, Life/Proctor 1958, Houston, TX
Edward D. Vickery, Life/Proctor 1951, Houston, TX

Mr. Farrell reported on a proposal received from Morgan Marketing & Communications, LLC to solicit advertising for the Directory. The consensus was that it made more sense to start with advertising on the website before attempting to incorporate advertising in the Directory, and Mr. Farrell will approach Morgan Marketing in this regard. Mr. Bonner noted that some firms have lists of recommended service providers, and that these entities could be approached and requested to advertise. It was also suggested that advertising could be included in materials for the Fall 2010 meeting.

The Directory is scheduled to go to the publishers on August 1, and the Young Lawyers Committee will be asked to contact people for whom we do not have email addresses so that this information can be obtained. President Marwedel reported that Doug Petco of PC Solutions had suggested converting the Directory to a binder format that could be updated. There was also a discussion of how the directory on the website could be made more user-friendly, and Mr. Farrell will discuss this with PC Solutions.

ASSOCIATION MANAGEMENT

Committee leadership appointments

New committee chairs are being selected to be appointed by the incoming President.

Nominating Committee

Immediate Past President Burrell gave the report of the Nominating Committee. The following persons have been nominated to serve as officers of the Association:

President	Patrick J. Bonner
First Vice President	Robert B. Parrish
Second Vice President	Robert G. Clyne
Secretary	Harold K. Watson
Membership Secretary	David J. Farrell, Jr
Treasurer	William Robert Connor, III

The following persons have been nominated to serve as Directors for the next three years:

Dennis Minichello
Thomas J. Muzyka
Francis X. Nolan, III
George W. Nowell

American Maritime Law Foundation

Mr. Watson reported that he is awaiting confirmation from a tax lawyer that has been consulted, but that it appears that the tax advantages that the American Maritime Law Foundation has do not arise as a result of its status as a 501(c)(3) corporation under the Internal Revenue Code, but rather from its exemption from state sales tax because it is a charitable corporation under the state law, and the Association would probably not qualify as a charitable organization.

MLA Fall 2011 Meeting

Ms. Zawitoski presented the hotel contract with the JW Marriott Ihilani Resort and Spa. The hotel normally charges \$500-700 a night for its rooms, but the Planning and Arrangements Committee has negotiated a rate of \$239 per night. This price will also apply for three days before and after the meeting with no commitment from the Association to take any rooms. The hotel will also charge its 2010 catering prices, and is only requiring a \$35,000 food and beverage minimum. On motion duly made and seconded, the Board approved the contract and authorized its execution.

With respect to future resort meetings, it was suggested that a survey of the membership might be in order. Mr. Roberts indicated that SurveyMonkey is a tool that might facilitate this.

MLA Fall 2010 Meeting

Mr. Bell reported that the arrangements are being finalized for the Fall 2010 meeting in Houston. The University of Texas has scheduled its Admiralty and Maritime Law Seminar for Wednesday, November 10, and the meeting proper will be from November 11-13. The plan is currently to have cocktail parties Wednesday and Thursday night, and a dinner on Friday night. Committee chairs will be contacted to determine the number and size of conference rooms needed for committee meetings, which will take place in members' offices in the downtown area.

BOARD SUBCOMMITTEE REPORTS

Committees

Mr. Parrish reported on the committee chairs meeting held on Wednesday, May 5. Marc G. Marling, chair of the Website and Technology Committee, made a presentation on Go To Meeting technology, and the committee chairs gave a brief report on the matters under consideration by the committees. There are four new committee chairs.

Finance

Mr. Clyne reported that there are two sponsors for the General Meeting, both of which are paying \$1000.

Mr. Clyne discussed the preliminary report on cost trends. This report will be revised and circulated.

The possibility of paying dues with credit cards was again discussed, and it was pointed out that this requires a payment to each credit card company, and then a payment of a percentage of each charge.

Membership

A number of sources of potential new members were discussed, including people who have cases reported in American Maritime Cases and any other lawyers handling maritime cases, lawyers in the District of Columbia with maritime administrative practices, the maritime plaintiffs' personal injury bar, and military lawyers.

The Board discussed a request by the chairman of the Government Counsel Committee to have a lower rate for junior officers in active military service. The consensus of the Board was that this would be difficult to administer, and would probably net very few additional members, since most military lawyers have some years in service before going to law school.

Website

Doug Petco of PC Solutions is preparing a report that will raise a number of points for discussion, and breaking down the time and cost involved in PC Solutions activities.

The chairman of the Website and Technology Committee has acquired 10 speaker phones that can be used at away meetings to defray costs at away meetings. On motion duly made and seconded, the Board authorized the purchase of these phones by the Association.

The “Member Services” feature that will be added to the website was discussed. This will include a list of suggestions regarding technology, travel, and the advertising section. The “Breaking News” feature was also discussed.

BOARD REPORTS

Standing Committee Liaison Reports

In their status as liaisons to the various committees, Board members were requested to monitor the committee chairs compliance with requests for provision of agendas.

Special Committee Reports

Coast Guard Relations (Forum)

Captain Frederick Kenney is now the U.S. Coast Guard liaison for this committee. There are at present no issues pending before this committee.

RECENT ASSOCIATION ACTIVITIES AND PROJECTS

Amicus Request and Participation

President Marwedel reported that there were 16 requests for amicus briefs during his tenure as president. Only one was accepted, which

is probably appropriate in view of the Association's stated policy with regard to this issue. The difficulty in getting members to write amicus briefs was also discussed.

INTERNATIONAL ACTIVITIES

IMO

President Marwedel reported on his recent attendance at the meeting of the Legal Committee of the IMO. The subject of discussion was a protocol to the HNS Convention to raise the limitation amount by 15%. While at the meeting, Mr. Marwedel arranged a meeting between the Coast Guard and the P&I clubs.

Rotterdam Rules

It was noted that the Committee on Carriage of Goods is discussing whether the Rotterdam Rules should be adopted as a self-executing treaty by ratification by the Senate, or whether there should be implementing legislation passed by both Houses of Congress. It was reported that the overwhelming sentiment on the committee was to ratify the Rules as a treaty, but that there was some dissent. It was also reported that legislation has been proposed that would adopt the current Carriage of Goods by Sea Act as the domestic regime if the parties adopted it, which is the approach favored by the domestic carriers.

On motion duly made and seconded, the Board unanimously passed the following resolution that a certificate containing the following wording be given to Mary Helen Carlson in appreciation of her efforts with respect to the Rotterdam Rules:

In recognition of her distinguished service with the Department of State of the United States of America, and as head of the United States Delegation to the United Nations Commission on International Trade Law ("UNCITRAL") Working Group III on Transport Law, which negotiated the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, now referred to as the "Rotterdam Rules."

[15870]

The Association takes this means of recognizing and thanking her for her extraordinary leadership in marshalling the support of industry and governments to modernize a critical component of our maritime law. She has made an outstanding contribution to The Maritime Law Association of the United States and to the field of Maritime Law.

On motion duly made and seconded, the Board also unanimously approved the following resolution authorizing a certificate to be given to Vincent M. DeOrchis, Chester D. Hooper, and Michael F. Sturley:

In appreciation of the services of Vincent M. DeOrchis, Chester D. Hooper, and Michael F. Sturley

Whereas, Vincent M. DeOrchis, Chester D. Hooper, and Michael F. Sturley, affectionately known to their fellow members as the “Gang of Three,” have worked tirelessly for most of a decade as part of the Working Group set up by UNCITRAL to negotiate a new international convention relating to the carriage of goods by sea; and

Whereas, working with the United States Department of State, the “Gang of Three” have represented the interests of the Association, the maritime bar, the shipping and commercial interests represented by members of the Association and their country with zeal, industry, and wisdom; and

Whereas the time and effort expended has involved extensive time and travel at the expense of their normal duties and their personal lives; and

Whereas, due in large part to their efforts, the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, otherwise known as the Rotterdam Rules, was eventually signed by the United States of America; and,

Whereas, at the meeting held on May 1, 2009, the Association recommended that the United States Senate ratify the Rotterdam Rules; and

[15871]

Whereas, the services of Messrs. DeOrchis, Hooper and Sturley have exemplified the highest standard of pro bono publico service and have furthered the objectives of the Association in furthering the improvement and uniformity of the maritime law;

Be it resolved, that the Maritime Law Association of the United States expresses its sincere appreciation to Vincent M. DeOrchis, Chester D. Hooper and Michael F. Sturley for their distinguished service. Be it further resolved, that this resolution be made a part of the permanent records of the Association.

President Marwedel thanked the Board Members for their hard work, and gave a special thanks to Immediate Past President Burrell for her many years of service to the Association.

There being no further business to come before the Board, the meeting was adjourned.

Respectfully submitted,

Harold K. Watson, Secretary

