



THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

MLA PROCEEDINGS
Spring Meeting - May 3, 2013

Present:

ROBERT B. PARRISH
ROBERT G. CLYNE
HAROLD K. WATSON
DAVID J. FARRELL, JR.
WILLIAM ROBERT CONNOR, III
BARBARA L. HOLLAND
PATRICK J. BONNER

And the following 220 members:

Kirby L. Aarsheim
Stephen A. Agus
Andy Aley
Charles Anderson
Olaf Aprans
Tyler W. Arnold
Todd M. Baiad
James W. Bartlett, III
Dick Basom

Michael Bell
William E. Bell
Bruce P. Bennett
CAPT Melissa Bert
F. Nash Bilisoly
Gavin R. Black
Michael Black
Meredith W. Blanque
Jorge F. Blasini-Gonzalez

Samuel P. Blatchley
Christina Bolmarcich
Forrest Booth
Lawrence J. Bowles
John E. Bradley
Richard A. Branca
James Brockmeyer
James F. Buchanan
Mark Buhler
Phillip Buhler
Lucienne Bulow
Lizabeth L. Burrell
Timothy S. Bush
Seth P. Buskirk
Christopher E. Carey
Asher Brooks Chancey
C. Gregory Chase
A.T. Chenault
Conte Cicala
John C. Cleary
Mark T. Coberly
Mark Cohen
Robert E. Collins
James P. Cooney
Daniel J. Cragg
John E. Crowley
Blane H. Crutchfield
Bruce P. Dalcher
K. Blythe Daly
Martin Davies
Christopher O. Davis
A. Robert Degan
Charles DeLeo
Christopher Dillon
Susan Dorgan
William R. Dorsey
Ted Dunlap
Stephanie A. Espinoza
Anacarolina Estaba
Boriana Farrar
Carol L. Finklehoffe
Robert Fisher
Vincent J. Foley
Lars Forsberg
Peter Frost
John J. Gallagher
Brad Gandrup, Jr.
Beauregard G. Gelpi
Kenneth J. Gelpi, Jr.
Gene B. George
Alexander M. Giles
Katherine L. Glenn
Robert S. Glenn, Jr.
Glenn Goodier
William Graffam
Joseph G. Grasso
Don Greenman
Jason R. Harris
Simon Harter
Kevin J. Hartmann
Thomas J. Hawley
Keith W. Heard
D. Christopher Heckman
Marissa M. Henderson
Julius Hines
Seth S. Holbrook
Chester D. Hooper
Anne D. Hopkins
Lori Hopkins
Rob Hopkins
J.T. Huffman
Bradley A. Jackson
Stephen B. Johnson
Suzanne Judas

Leo G. Kailas
Eric Kaufman-Cohen
John P. Kavanaugh, Jr.
Allan R. Kelley
Terence G. Kenneally
RADM Frederick J. Kenney
Lawrence I. Kiern
John D. Kimball
Robert L. Klawetter
Sandy Knapp
Jean Knudsen
Lynn L. Krieger
Jon-Peter Lamore
Ross I. Landau
Denise S. Lautmann
Kevin J. Lavie
Dwight LeBlanc, III
J. Dwight LeBlanc, Jr.
Edward F. LeBreton, III
Richard M. Leslie
John T. Lillis
Geoffrey A. Losee
Henry C. Lucas, III
Clay Maitland
Jedd Malish
Janet W. Marshall
David Martowski
Jessica Martyn
Robert K. Marzik
Patrick O. McAleer
Brian B. McAllister
Michael B. McCauley
Jessica L. McClellan
John H. McConnell
Howard McCormack
Daniel G. McDermott
Peter A. McLauchlan
James E. Mercante
Dennis Minichello
Justin D. Mitchell
Jeffrey Moller
James Moseley, Jr.
Thomas J. Muzyka
Carl Nelson
Katharine F. Newman
John Nichols
Christopher R. Nolan
Francis X. Nolan, III
Michael J. Northmore
David A. Nourse
George W. Nowell
Robert P. O'Brien
Kevin G. O'Donovan
Michael D. O'Keefe
Richard H. Ottinger
Armand M. Pare, Jr.
Robert D. Peltz
Stephanie S. Penninger
Jennifer M. Porter
John E.D. Powell
Edward J. Powers
Katharina B. Powers
Anthony J. Pruzinsky
Salvador J. Pusateri
Daniel W. Raab
Donald Radcliff
Edward C. Radzik
James B. Re
Lisa Reeves
Winston Rice
J. Ramon Rivera-Morales
William J. Riviere
Edwin D. Robb
C. Kent Roberts

Antonio J. Rodriguez
 Thomas S. Rue
 James E. Ryan
 John M. Ryan
 Michael J. Ryan
 John Sandercock
 Charles E. Schmidt
 Christina Schovajsa
 Gordan D. Schreck
 Janis Schulmeisters
 J. Ben Segarra
 Imran O. Shaukat
 Charmin B. Shiely
 Capt. Jim Shirley
 M. Ellen Shults
 David F. Sipple
 Peter Skoufalos
 David S. Smith
 Steven L. Snell
 Jonathan Spencer
 Michael Stern
 Douglas B. Stevenson
 Norman Stockman
 William Storz
 Michael F. Sturley
 LT Brendan Sullivan
 Norman Sullivan

David Sump
 Joseph C. Sweeney
 Eric Thiel
 Kevin Thornton
 Jose J. Torres-Escalera
 Joseph D. Turano
 Mike Underhill
 Charlotte Valentin
 Alan Van Praag
 Jack Vayda
 David N. Ventker
 Arthur Volkle
 Thomas J. Wagner
 David R. Walker
 Joseph A. Walsh, II
 Kevin P. Walters
 Rahul Wanchoo
 Patrick Ward
 Deborah C. Waters
 William H. Welte
 Gerard W. White
 James F. Whitehead
 Andrew C. Wilson
 John M. Woods
 Peter Zambito
 Robert Zapf
 JoAnne Zawitoski

And the following 14 guests:

Tomas M. Avila
 Giorgio Berlingieri
 Valeriano Del Rosario
 Anne B. Fischer
 Ngosong Fonkem
 Nigel H. Frawley
 Hon. Johanne Gauthier

Stuart Hetherington
 Soren Larsen
 Jonathan Lux
 John G. O'Connor
 Dr. Oliver Peltzer
 Dr. Dieter Schwampe
 Adriana Ulloa

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MR. PARRISH: I'd like to call the meeting to order.

Good Morning. Glad to open the 2013 annual general spring meeting of the Maritime Law Association of the United States. This is my first time at the podium because we all know that the weather shined terribly on me in the fall and the meeting was cancelled due to Hurricane Sandy, which gave our friends in New York a lot of trouble. But as we say in the south, the sun don't shine on one dog's rear end all day long. So the New Yorkers took the hit for us in the fall, and we're back with them in the spring. It's been a beautiful, glorious week. All week has been fabulous. I thank everyone for their attendance.

We will start with the secretary's report, please, Mr. Farrell.

MR. FARRELL: Thank you, Mr. President.

First of all, a couple of housekeeping matters. I hope you've all signed in. We're going to be having a vote today and we need to have a quorum documented.

I hope also that you had a chance to say hello to Robin Becker, our MLA Administrator, out in the lobby, as well as Marissa Henderson and Asher Chancey, who greeted you at the sign in tables. They are with the Young Lawyers Committee who are always willing to pitch in.

We also had a video, I hope you had a chance to look at over coffee, of the El Conquistador Hotel where we will be meeting this fall in Puerto Rico.

Speakers, when you come up to the podium, please hand your business card to Georgia Winegeart, our court reporter. We're very pleased she is serving here today with the kind contribution of Tom Crites & Associates International from Savannah. They also have a court reporter, Wanda Buckner, in Germany. So if you have any court reporting needs domestically or around the world, please consider using the Crites reporters. We're grateful for their help.

Despite the cancellation of our Fall 2012 meeting, the work of the MLA has continued unabated. You'll be hearing from the Committee Chairs on projects that are ongoing and the Board has stewarded the management of the Association by holding three meetings in person and two by telephone since our last meeting in this room.

On the financial front, on the advice of our accountants, the Board has transitioned the MLA's fiscal year to coincide with the calendar year.

And akin to the promise of landing an American on the moon by the end of this decade, the Board is proceeding full steam ahead with a replacement and full upgrading of our website on President Parrish's recommendation, before the end of his term.

We've got an outside consultant who prepared a very technical report detailing all of the things that we need to be aware of, and that was distilled by the Website and Technology Committee's Marc Marling and Lynn Krieger. We have requests for proposals out to the website creation industry and will be receiving bids two weeks from today, with plans to launch our new website around the start of 2014.

There are several areas that the Board took substantive action on regarding maritime law, based on unanimous votes of various committees.

First, last fall the Board approved the Marine Financing Committee's recommendation that the Marshall Islands Registry confer preferred maritime status on bareboat charters which in effect are the sale of a vessel.

Second, a joint project by the Marine Financing Committee and the Fisheries Committee led to a Board recommendation to the Coast Guard for revisions to 46 C.F.R. Part 67, which concerns documentation and mortgaging of vessels. This is really a clean-up effort, non-substantive, and somewhat ministerial.

And third, the Board approved the Practice and Procedure Committee's presentation to you today of a resolution to amend Rule 82 of the Federal Rules of Civil Procedure, which deals with venue of admiralty and maritime claims.

On the international front, President Parrish attended the International Maritime Organization, IMO, meetings with Coast Guard Captain Melissa Bert last week in London and he led an entourage of MLA delegates last fall to Beijing for the Comité Maritime International Meeting.

On the MLA's suggestion, Past President Liz Burrell will be chairing a committee to assess the CMI's role in developing international maritime law. We're also pleased that the CMI has accepted our invitation to have a meeting of the CMI and MLA at the same time in New York in the spring of 2016.

Finally, despite all of our technological improvements and electronic communication, we still think it's appropriate to hand out something in text that you can read when you're on the train or at home watching the Red Sox on TV, and so recently we sent out the *MLA Proceedings* and *The MLA Report*, which is edited by the esteemed duo of Past President Chet Hooper and David Nourse. It really is a compendium of case updates and other information. It's very well done. I commend them for it and recommend it to you.

Mr. President that concludes my report. I move its adoption.

MR. PARRISH: Is there a second?

MEMBERS: Second.

MR. PARRISH: All in favor?

MEMBERS: Aye.

MR. PARRISH: So approved.

Mr. Treasurer, Bob Connor.

MR. CONNOR: I am happy to report the Association is in sound financial shape, mostly due to the fact that this year everybody decided to pay their dues much quicker. Our cash flow is better. I want to thank again Robin Becker, our administrator, who handles all of the heavy lifting on getting the dues invoices to you, and I want to thank all of you who responded so quickly, either with your checks or the firm check, or an awful lot of you, through the website's new ability to use credit cards. So that's going very well.

Having said that, there are still about 500 of you who haven't sent in a check, and we would be very happy to receive your dues. So think about it. If you can't remember if you paid your dues, you can go on the website and you can click on the appropriate buttons, and you'll find out if you're up to date or not. Or if all else fails, pick up the telephone, call the 800 number, and Robin will tell you what you owe or don't.

So anyway, thank you for that. We did have a heavy year of expenses. The printing of the *Directory* every other year is a significant cost, let alone mailing it to you. Dave just said that travel was heavy this year because of China and other things, but we're still ahead of the game and I'm happy about that.

Tonight, we have, I think its 833 people coming for dinner at Cipriani's. I'm sure you'll be very pleased. The band that we had for the fall was kind enough to allow us to move them to the spring, so Code Blue will be there playing, and for those of you with your dancing shoes, I think you'll find it great.

Coming up we have Puerto Rico in the fall. The registration probably will not be through the website but we're hoping you'll be able to pay the registration fee on the website.

And that concludes my report. I move it's adopted.

MR. PARRISH: Is there a second?

MEMBERS: Second.

MR. PARRISH: All in favor?

MEMBERS: Aye.

MR. PARRISH: So approved.

Membership Secretary, Barbara Holland.

MS. HOLLAND: Mr. President, we are reporting membership numbers for the entire year since we did not have our general meeting in November. I am pleased to report that in the last year we have 4 new judicial members, 24 new proctor members, 76 new associate members, 5 new non-lawyer members, and 15 new law student members.

Our new judicial members are:

The Honorable Margaret McKeown
from the Ninth Circuit Court of Appeals;

The Honorable Nelva Gonzales Ramos
from the Southern District of Texas;

The Honorable Michael Davis
from the District of Minnesota; and

The Honorable W. Michel Pierson
from the Circuit Court for Baltimore City, Maryland.

We are very proud of our proctors for doing the work to take this extra step, and I would like to list them for you. We have, as new proctors in the Association:

Admiral Charles D. Michel;

John J. Bromley;

John E. Casperson;

Steven A. Clark;

17406

Lauren C. Davies;
John Kimmerlein;
Kevin T. Murtagh;
Neal Quartaro;
Alanson T. “Skipper” Chenault;
Carl H. Delacato, Jr.;
Stephanie Espinoza;
Boriana Farrar;
Daniel J. Fitzgerald;
Parker Harrison;
Simon Harter;
Lynn L. Krieger;
Christopher Lowrance;
Theodore H. Lucas;
Jedd S. Malish;
Captain Brian McEwing;
Arthur F. Mead, III;
John C. Nichols;
Pamela L. Schultz; and
Jess G. Webster.

We congratulate all of the proctors. Thank you for your continuing support and participation in the Association.

In addition, Mr. President, we have five new non-lawyer members. We would like to recognize them as well:

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Dr. Patrick J. Hudson
from CTL Group;

Louis D. Magnan
from Magnan, Graizzaro & Associates, CPAs;

Captain Stephen A. Richter
from Richter Marine Consultants;

Roy J. Scott
from Scott Marine Surveyors and Consultants; and

Alexandra Portes-Antoine
from Samsung Fire & Marine Insurance Company.

Mr. President, with regret I also report to you the deaths of
the following members of the Association:

The Honorable Robert L. Carter
of New York;

The Honorable William C. Conner
of New York;

The Honorable Betty R. Fletcher
of Seattle;

The Honorable Robert R. Beezer
of Seattle;

The Honorable James M. Fitzgerald
of Anchorage;

The Honorable James C. Paine
of West Palm Beach, Florida;

17408

Thomas E. Leeds, Jr.
of New York;

Kenneth E. Roberts
of Portland, Oregon;

Charles Brown
of New York;

Gerald Ginter
of New York;

James W. Lynch
of Mineola, New York;

John R. Newton
of Wilmington, North Carolina;

Thomas O. Murphy
of Cleveland, Ohio;

William D. Carle, III,
of Lakewood, Ohio;

Philip G. Myer
of Louisville, Kentucky;

John B. Peuler
of New Orleans, Louisiana;

Lloyd L. Anderson
of Hampton Bay, New York;

William J. Coffey
of Newport, Rhode Island;

Michael Marks Cohen
of New York;

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George W. Healy, III,
of New Orleans, Louisiana;

Donald A. Hoffman
of New Orleans, Louisiana;

Charles F. Lozes
of New Orleans, Louisiana;

A. Lauriston Parks
of North Kingstown, Rhode Island;

Thomas W. Thorne, Jr.,
of New Orleans, Louisiana;

James F. Young
of Philadelphia, Pennsylvania; and

Captain Carl Lundin
of New York.

If we can have a moment of silence, please, for those members.

(Moment of Silence)

Mr. President, as of today, our total membership is 2,882 members. That concludes my report, and I move to adopt.

MR. PARRISH: Is there a second?

MEMBERS: Second.

MR. PARRISH: So approved.

We, the Board, your Board, pay a lot of attention to the Association's health. We are healthy and vibrant. We are growing, I assure you, but we are graying at the same time. We're leaving, but

we're coming back in. So the state of the union is strong and healthy. You will hear shortly from the committees of the Association and that will evidence that point.

I want to just take a break and ask our friends along the wall, Sam Blatchley from Boston, would you lead them through. And there are some seats over here, unless you're trying to move away to escape. So we have a great bunch of new lawyers. I don't know if these are all, but these are some I recognize from the meeting yesterday. Sam, is that what you're leading in? Have a seat.

The next item on the agenda is the introduction of dignitaries. We have quite a few. The leader of the band of the Coast Guard is our dear friend Rear Admiral Fred Kenney. He is such a smart lawyer that he is the only military lawyer that holds the title of Judge Advocate General and Chief Counsel.

Fred, would you like to say a few words?

REAR ADMIRAL KENNEY: Well, thank you, Bob. And good morning everybody. It's really a great honor and pleasure to be here again this year.

First, I want to thank Bob for his great support of the Coast Guard. I know they had a very productive week at the IMO, getting some good results out of the legal community with, from what I understand, was a couple of good rounds of golf and some good restaurants. Congratulations on that Bob.

But I did want to just, very briefly, report to you that I think the state of the Coast Guard/MLA partnership remains very strong. It is really a critical partnership for the free flow of information and the exchange of ideas, and we've seen that over the last year.

I just wanted to hit, very briefly, a couple of highlights and some updates. First, as I'm sure you all know, we did get an authorization act in December of 2012. It's the first time that we've got authorization acts for the Coast Guard in two consecutive Congresses since the 1980s. We are hard at work for our next authorization act

as the coordinator for the Coast Guard's legislative program. We are in the process of developing our legislative change proposals, seeing what's coming in from the Hill, and working very closely with both the Senate Commerce, Science, and Transportation Committee and the House Transportation and Infrastructure Committee which are the authorizing committees to begin work on these drafts.

I will say, and I want to compliment their staffs – have really been engaged. And I think we have a really aggressive staff on the Hill who wants to see the Coast Guard getting an authorization bill in every Congress, which is something that has not happened in a long time and I'm confident that we are going to get an authorization act in the 113th. So look forward to that. Take a look at the bills as they are introduced. And please we need your input.

Second -- and I think Captain Bert discussed this during the week, and we certainly discussed this down in Washington on Tuesday -- I would ask you to pay close attention to, for those of you who have an interest in maritime environmental law, to the EPA's new Vessel General Permit. Quite frankly, I think we are entering into a time where environmental regulation of vessels is going to get more confusing. If you look at the VGP and the state certifications that have come from it, we're seeing a lot of inconsistencies. It's always been the Coast Guard's view that consistent standards of uniform application are the best way to regulate the maritime industry. I think we're drifting from that, and I would ask you to watch that closely.

Third, very briefly, as you know, the Law of the Sea did not get out to the Senate Foreign Relations Committee. I think that was actually a wise tactical move by then Senator Kerry. I wish I had some good intelligence on what now Secretary Kerry is going to do but I don't think he's lost his passion to get the Law of the Sea acceded to by the United States and the Coast Guard still firmly believes, particularly with what's happening in the Arctic, that we need that treaty. I would ask you to watch that closely as well.

And, finally, everyone wants to know what's happening with the budget and the sequester. I will tell you that I took the bus up here last night, for real. Not my preferred mode of travel, but we all have to do our part. But seriously, the sequester is affecting the Coast Guard. It's impacting our operations. Some of you may have had a chance to look at the President's budget for fiscal year 2014 that was submitted to Congress three weeks ago. It represents a very difficult balance between the Coast Guard's need to recapitalize and our need to maintain current operations and required operations, such as search and rescue, oil spill response, hurricane response, what have you.

I can't think of any better way to describe the situation than to quote Secretary Napolitano in her testimony last week before the Senate Appropriations Committee. The Commandant had what I thought was a very successful series of hearings there in the last few weeks regarding our budget. But as she said, this is a tough, tough, tough budget. And we are working as hard as we can to preserve our front-line operations, but also recognizing our desperate need to recapitalize, so we can secure the same level of service in the future.

And with that, I thank you very much. Thank you for your time, Mr. President.

MR. PARRISH: Thank you, Fred. I just want to – (applause) just want to comment and assure, Fred, at least as far as I can tell, my long term memory is still intact, and I remember 20 years or so ago a slash in the Coast Guard's budget, and you came to us, and we responded with our voices. And if you need that, please call on us again.

Next I'd like to recognize my boss from London, Captain Melissa Bert. She headed the U.S. delegation to the IMO and did a fabulous job. Brendan, you're hiding in the back, but the guy who does all the work, Lieutenant Brendan Sullivan from the Coast Guard has also been very kind to us. Is Dr. Balkin here from the IMO?

MEMBER: I don't think so.

MR. PARRISH: Dr. Balkin is the Director of Legal Affairs and External Relations Division of the IMO, the International Maritime Organization, and I expect she will be at dinner tonight, so please welcome her.

Next we have some close, close friends from the Comité Maritime International, of which we are, of course, one constituent member. I ask them to stand. Some of them have speaking roles later. But Stuart Hetherington would you stand so everybody knows your face. CMI Vice President, our old friend, Judge Johanne Gauthier, who is not only a member of the Federal Court of Appeal, singular – Canadian MLA President John O’Connor corrected me on that the other day – but also Vice President of the Comité. And also Giorgio Berlingieri, the other Vice President of the Comité and, of course, Nigel Frawley, Secretary General of the CMI. Thank you.

Is Soren Larsen here today with us? I know he’s been around all week. Soren, hello. Soren Larsen, the Secretary General of BIMCO with whom we work closely through Past President, Liz Burrell. A special, special friend of mine personally and partner in our Puerto Rico meeting in October of this year, which we will hear much more about, the President of the Instituto Iberoamericano de Derocho Maritim. I’ve been working on that all week. Sènor Bill Graffam. Billy? Is he out at the booth hawking tickets still? Good, tell him to stay out there and work on the meeting. Everybody knows Bill. Bill has been an MLA member for 25 years.

MEMBERS: Here he is.

MR. PARRISH: You don’t get to talk yet.

MR. GRAFFAM: They said you were looking for me.

MR. PARRISH: You’re going to have some time for a little talk later on. And with Bill is Adriana Ulloa, a young lawyer with the IIDM, can’t say it twice. She’s the head of the Young Lawyers of the IIDM, which is briefly, a group of several hundred Hispanic speaking lawyers from Central and South America, the Caribbean,

Spain, and Portugal. We're going to partner with them on the Fall 2013 meeting. You'll hear about that later.

John O'Connor, the president of the Canadian Maritime Law Association, with whom we work closely.

And finally – Douglas Stevenson, who is the Director of the Center for Seafarers Rights, he has begged me for two minutes. He gets it.

MR. STEVENSON: Thank you, Mr. President. Is this turned on?

We often wonder what's the best maritime law firm in the United States, and the Seaman's Church Institute will give you the opportunity to show that. We're going to have a competition in western Maine over 25 miles, 10,000 feet change in elevation, with three member teams. You will be competing against each other and against your clients. We already have 23 of your clients registered. So I encourage you to enter this race. It will be great for you as your team building within your firm, and it will also help the Seaman's Church Institute. You can see me afterwards for details.

MR. PARRISH: Thank you Doug. You did well.

Is Helen Noble out there somewhere? Helen Noble is the President of the IMLA, Irish Maritime Law Association. She's here this week. I don't think she's in the room right now.

If I missed any other dignitaries, I apologize.

I did want to mention there are also numerous foreign lawyers in attendance. I thank you for attending. Also I see Lori and Anne Hopkins are here from AMC. Welcome.

The next item is a personal matter to me. I've been, like you, watching the television too much these days. So I felt compelled to make the following statement:

Twelve years ago, a few days after the 9/11 attacks, we met in Coronado, California. President Bill Dorsey, who is here today, led on October 17th, 2001, a service of commemoration and remembrance for the attacks on America. Betty Cohen, who is here with us today, buoyed our spirits, sang America the Beautiful and God Bless America. Former MLA Membership Secretary, Winston Rice, now the Reverend Winston Rice, is also here with us today. He attended to the then, in the wake of 9/11, considerable spiritual needs.

Now, once again, prior to this meeting, the nation and our members have been touched by the horrors of terrorism. My first thought was of my board members, whom I worked closely with, Dave Farrell, and Tom Muzyka, both from Boston. They quickly confirmed, that their bodies were intact, but they'd been closely shaken and, in the words of one, soiled. I have since learned that Past President Hooper and Keith Heard both suffered near misses with family, young grandchildren in attendance at the Boston Marathon close by the bombings. I'm sure that others from the MLA family have been deeply affected by this attack.

I want to thank our uniformed services for their continued protection of our nation. I was in London as part of the U.S. delegation to the IMO. I know nothing of the details, but I did notice Captain Bert instantaneously responding to this event, no doubt reporting to her boss, Fred Kenney, as they handled countless resulting security issues we will never know about.

At the same time, I'm sure our member Rear Admiral Chuck Michel was acting to protect us, as well, in his role as the Director of the Joint Emergency Task Force South.

Then President Dorsey summed it up this way on October 17th, 2001, and I quote, "The point – and I think you all demonstrate by your presence here your agreement – is that we should not and we will not be cowed by evil fanatics in the disruption of our lives and our work."

I did not want this event today, this 2013 meeting, to go unnoticed for the records of this Association. I would ask for a moment of silence to remember these losses.

(Moment of Silence)

Thank you.

The next item on the agenda is a source of incredible joy for me, and at the same time the sorrow of loss. It's a remembrance for the delightful Bunky Healy. I would gladly take 30 minutes and further prolong this agenda, but I won't. I planned some people who knew Bunky better -- didn't like him more, but knew him better -- to celebrate this. I first want to, however, recognize Sharon Healy, and Bunky and Sharon's daughter, Mary Margaret. I know you don't want to talk, but please stand up.

(Applause.)

MR. PARRISH: We've had a lot of past presidents, but I don't think there was one more colorful than Bunky.

Who is running the show? I recognize Tom Wagner from New Orleans.

MR. WAGNER: Good morning. This is a special moment for me.

MR. PARRISH: A little closer to the mic, Tom. I'm sorry.

MR. WAGNER: Bunky Healy was life personified. We can talk about people in terms of personality, or we can talk about people in terms of character.

MR. PARRISH: We're not hearing you back here.

MR. WAGNER: Bunky was a person of character with a remarkable personality. He touched us all in ways that will always be with us. His life was a series of challenges and accomplishments,

sparkled with moments of relaxation, happiness, and occasional frivolity.

Born in 1930, he attended Tulane, earning his A.B. before it was a B.A. and his L.L.B. before it was a J.D. He spent summers as a wiper aboard Waterman and United Fruit vessels and served in the Korean War. He then joined John Sims' group at Phelps Dunbar, and with John led a remarkable group of lawyers in the practice of admiralty law.

There's so many ways to talk about Bunky. But rather than talk about his accomplishments at trial or his unique role as president of this Association, his role of president of the Bar Association of New Orleans, and all of his other accomplishments, I prefer to talk about Bunky, the man whose presence remains among us.

Thomas More was a "man for all seasons." Bunky was that, but not in the renaissance sense. He was not a person who stood aloof, not somebody you looked at in awe, but somebody who shared life in every way with you. He was unique. He was the greatest host in the world and the greatest guest you could ever have. He made you feel special and important. And that was his way whether he was arguing a critical collision case, or teaching his dog how to hunt and point. Once he and Sharon hosted a party at the old Audubon Park Tea Room. It was a "guys and dolls" party. I think the city of New Orleans wanted to be there, just to share time with Bunky and Sharon.

A man of all seasons, Bunky was also a friend for all reasons. Sharon will tell you a story about his meeting an Egyptian traveler on a plane, a man uncertain about his future. Bunky instantly befriended him, and they maintained their friendship for 35 years.

Bunky was 57 years at Phelps Dunbar. He once had a great offer to practice elsewhere, but he couldn't leave. He couldn't tell his friends and partners good-bye. A rare man.

In 1975, unknown to me, I was almost passed over for partnership at Phelps Dunbar. But for Bunky, I would have been. I would learn over the years that that had happened many times before, and I witnessed it happen many times again. He was a loyal friend at all times.

Once, after a scathing by a federal judge in the late 70s, I was ready to quit. Bunky was there. He said, that's just a day. Wait until tomorrow. And tomorrow was fine – with Bunky as my partner and friend.

Man for all seasons, friend for all reasons, Bunky was also notorious as a mentor. A mentor but from a distance. When I joined Phelps after the service, I was assigned to Bunky's team. I was a man by the book. You give me a plan, you give me a map, and I'll get you there. Bunky was different -- intuitive, insightful, vibrant, and spontaneous. I learned quickly that the practice was not all "by the book" and that the best results often could not be scripted.

He was a lawyer for the ages. Great friend. Outstanding member of this Association. He and Michael O'Keefe used to shut down MLA week at the Oak Bar, singing "Me and Bobbie McGee." Mike once paid a band \$50 to stop playing, so he and Bunky could close with their song.

That's what kind of person he was. Words can't describe him. He was just a special fellow and a wonderful friend.

I'm going to leave these pictures here. They're from the New Orleans Bar Association. One is a terrific shot of him and Sharon, one with him offering a toast, as was his wont, and the other just with his smile. He was a wonderful man, and I'm honored to have shared these few words in his behalf.

Thank you.

(Applause.)

MR. PARRISH: Thank you, Tom.

We had an MLA member turn to the cloth, and I'm not sure what's going to happen.

REVEREND RICE: Hi, my name is Winston, and I'm a recovering lawyer. I'm glad to be able to play my clergy card and do this today, because I'm sure that if we opened this mic to everyone who wanted to tell a Bunky Healy story, we'd have to be searching for loaves and fishes, by the time the sun started setting this evening.

Like Tom Wagner, I first came into contact with Bunky at Phelps Dunbar 42 years ago, and over that 42 years, we came to be not only colleagues and friends, but confidants as well. Yes, Bunky was a friend of mine, but we did a lot more than share tequila with a little salt and lime.

In the realm of the law at sea, we worked together sorting out the results of the sinking of two mobile offshore drilling units, and the sinking of a shrimp boat cut in half by an offshore service vessel proceeding at full speed on autopilot. We dealt with the murder of a crew member in the south Atlantic. We actually became adversaries for a while when an offshore service vessel damaged a mobile offshore drilling unit off Brazil, and it turned out that the drilling unit was owned by a client with whom I had a relationship, and the service vessel by a client with whom Bunky had a relationship. Upon calling attention to this conflict of interest, the clients almost immediately conferred with each other, waived the conflict, and said, "OK, let's let Healy and Rice try to sort this out, and in the event they can't, we'll just have to go somewhere else."

Well, to no one's surprise, we pretty soon sorted it out to the satisfaction of all concerned, except for the two law firms who were on standby in case we failed to do so. So it was with that we were able to proceed.

And there were also practical lessons which I learned from Bunky: How to navigate the New York City subway was one of my many accomplishments under his pupilage and his also pointing out to me the absolute best benches in Battery Park upon which to take a nap after lunch at the Whitehall Club.

And, of course, there's the personal relationship. I recall one time when we were in a meeting and all of a sudden in one of those typical New Orleans cloudbursts, the streets were flooding, and I, as a single parent, needed to go collect my son from school. And Bunky said, "Oh you don't need to do that." I said, "Why?" He said, "Well Sharon will do it." So he sends her forth into the flood waters while we're relaxing on the 13th floor of the Hibernia Bank Building, high above any sort of exposure.

Our wives spend so much time together, they're often mistaken for sisters.

You may also recall, those who were present at Michael Cohen's memorial a couple of days ago, Michael's being famous for showing up at almost every event of this Association and others. I defy anyone in this room to site to me any invitation they ever sent to Bunky Healy that he didn't show up. His late mother, Margaret Healy, told me one time that Bunky treated every invitation like a subpoena. He thought it was just that important to support his friends, both personal and professional.

And we also had wonderful times down at the Gilchrist compound at Orange Beach, Alabama, including one time when we went down there with a number of officers and friends from this Association. When one gentleman from New York mentioned that it was a really nice place down there at the beach, and he might think about moving here, I had to point out to him that he had way too many teeth and not nearly enough tattoos to fit in with the local population.

Then there's Bunky's celebrated *pro bono* victory for Curtis Kyles, rescuing him from death row in Louisiana's Angola Prison.

Now, most of you know that Bunky was far from being a bleeding heart liberal. Very far from it. But after reading the transcript of – and the record of Curtis’ case, Bunky became convinced of one thing. It didn’t matter whether Curtis was guilty or not, and it didn’t matter whether he was a solid citizen or not, which he certainly wasn’t, but he was sure Curtis didn’t get a fair trial, the fair trial to which we are all entitled. And on that basis and that basis alone, he threw his heart and soul into Curtis’ case, obtaining for Curtis a new trial.

I won’t go into what happened to Curtis after that, because the best example I can give is Curtis’ case itself, the example of Bunky’s keen sense of justice and one which we all should aspire.

The famous 20th century poet T.S. Elliot once wrote, “In the end is my beginning.” And that, too, is the teaching of my faith. So it is that we commend our brother Bunky to God’s eternal home. There may he find with his friends who have gone before and after him, especially Michael Cohen, Ken Roberts, Ann Lucas, Ray Crowe, Tom Brown, Frank Deutchsman, Terry Tobin, and Jim Young, just to name a few, to obtain that everlasting peace and security promised to us all.

We all feel Bunky’s loss immeasurably, but we can affirm his life and leave this place rejoicing, I believe, in his life, and we can accept also his death, placing him in God’s eternal care, by the grace of God to rest in peace until we meet again.

Allow me to pray. Almighty God, creator of the universe, we give you thanks for rivers, gulfs, oceans, and the waters of this world, and especially for the gift you provide us through them. We give you thanks for the maritime industry, which for thousands of years has provided an honorable living to many and has bound together the peoples of this planet.

We give thanks to the skill and dedication of mariners, both aboard and ashore, upon whom the maritime industry depends. We ask for your continued presence with mariners in their daily work. We pray for their well-being as they face the various challenges

of their vocation, and for their families who face long periods of separation, loneliness, and anxiety.

And finally, we pray for ourselves that you, in your mercy, steer the vessels of our lives to the everlasting shores of peace and to the quiet havens of our heart's desire. Amen.

Good-bye, Bunky. We miss you. You'll be missed in this group and in these halls, but you will not, I assure you, be forgotten.

Thank you.

(Applause.)

MR. PARRISH: I'm going to step down from the podium for a minute to present Sharon with a copy of the latest MLA Report prepared in memoriam for George W. Healy, III.

As Winston rattled off the list of the departed folks, friends, giants, it reminded me of something I was meaning to say in anticipation of the next presentation. One of the saddest jobs of this position is to get the daily, almost daily notifications of the departure of our members. I get innumerable requests to appear on the floor, as I did this year. And it has been history that we only celebrate past president's departures. However, that is not without exception. And I'm going to – being a scared rascal of the south, I'm going to try and do what's been done in the past.

In the past it has been noted that there are some of us who are more equal than others in terms of their commitment, their dedication, and their lifelong service to the maritime laws of the United States and this Association. But although they didn't rise to the job of president or officer, they nevertheless distinguished themselves and in this respect, I made the decision that Michael Marks Cohen was such a giant of our association, such a champion in the maritime world and Bette, such a dear friend and life time participant, that I asked John Kimball to say some words.

Before that, I want to recognize that Bette is here. Bette, if you and Daniel would stand. Betty and Daniel.

(Applause.)

MR. PARRISH: I also want to say a special thanks to Terry Schultz, who I know was of such assistance and aid to the family during this tragedy.

John Kimball.

MR. KIMBALL: Michael Marks Cohen made an indelible impression on all of us. And his presence in this Association and the Comité Maritime International was quite enormous. And it is fitting that we take just a moment to reflect on his contributions to both the Maritime Law Association and the CMI.

In just a minute, I'm going to introduce Stewart Hetherington, who will offer his observations about Michael's contributions to the CMI, but President Parrish has given me the honor of offering observations of my own about Michael.

When I speak about Michael, I use the word "contributions" deliberately, because that's what Michael was about. His contributions to the Maritime Law Association and the CMI were extraordinary. Michael truly believed that the work of the Maritime Law Association and the work of the CMI, were very important, and he, therefore, dedicated himself to an array of different projects. Invariably he would have a tendency to take over a project, but he was also willing to listen to the voice of others. His contributions were amazing.

Now, I'm not going to list all of the committees, all of the projects Michael was involved with. At the memorial service on Tuesday night, Liz Burrell gave us a very moving presentation about Michael and all of the things he did. I'm not going to try and do that again. But I did want to note a few things.

First, he was the Chairman of the CMI Committee for quite a long time. Michael had a presence around the world. He seemed

to know everybody. He seemed to know everything that was going on everywhere. And through all of his relationships, he elevated the role of the MLA and the CMI, and he did so in the best interests of this Association.

Michael participated in many of the CMI conferences. His voice always was heard in a constructive way. But the thing about Michael that was amazing to me, Michael was very at home with lofty ideas, and he could speak as eloquently as anybody, but he also recognized the importance of the mundane things, such as making sure we got CLE credit. So it was Michael who was always running around with a pad to make sure we got our CLE credits signed up. And Michael always was the guy who, before the meetings, made sure that we all knew what the best restaurants were and what sites we should be sure to see.

Many people have remarked upon the communications they received from Michael before the CMI meetings and I was one of the beneficiaries of those communications.

Michael did another thing for the MLA, which I think is extremely important. He was very active in the forum of law professors and the Friday afternoon CLE programs. For decades Michael toiled in making sure those CLE programs went forward and made an enormous contribution to our Association in that way.

Michael was a most unique person. I won't go into many details of our relationship. I'll just note that when I first encountered Michael, it was in a telephone call. I was attempting to get him to talk about a case. It was a very short call because he said, John, this is going nowhere, and hung up. This was a first for me. I had never had this experience. The call was followed by a meeting that we had on the same matter at Burlingham Underwood's office that day. And I went over with a client actually to meet Michael.

Fairly shortly into the meeting, Michael said this was going nowhere and left, which was interesting because we were at his office. Soon thereafter, his secretary came in, and we found our way out. But our relationship improved over the years quite dramatically.

And when I took over the admiralty course at NYU when Nick Healy stepped down, the first person who called me was Michael. He was then teaching at Columbia, and had been forever. And he took me under his wing and became my mentor. He gave me lots of instruction and continued to do so for years. I was very grateful for that.

When I succeeded Michael as the Chair of the CMI Subcommittee, Michael continued to give me advice and suggestions, all of which were very helpful.

Michael could be the most charming person in the world and at times he could be direct. Maybe that understates it. The Book of Ecclesiastes tells us “It is better for a man to hear the rebuke of the wise than to hear the song of the fool.” And I appreciate the wisdom of that statement when I think of Michael. Michael was the wise man, for even when he was, at times, brusque and direct, he always intended to instruct. He had good intentions and always wanted to make things better. He certainly made the MLA a better organization, and he did the same for CMI.

We are going to miss Michael, but we will remember Michael as well.

Now, let me ask CMI President Stuart Hetherington to step forward and offer comments about Michael’s participation in the CMI.

MR. HETHERINGTON: Thank you, John. Thank you Mr. President.

Bette and Daniel: In these remarks, I have edited the address I gave on Tuesday at the memorial service for Michael that John has referred to. I will only deal with Michael’s contribution to the CMI rather than my own friendship and contacts with him over the years.

Michael was a Titulary Member of the CMI and Chairman for many years of the US MLA CMI Committee as you have heard. As we also heard on Tuesday, in that role, Michael ensured the

delegates to CMI events from the US MLA were well prepared both scholastically and socially for the conferences and the meetings that he and they were all attending.

As to the latter, Frank Wiswall tells me that Michael was tour director for the US MLA. He made arrangements with airlines for special group rates and with conference hotels for breakfast meetings, so that those delegates could meet, form their views, and be prepared to express those views at the meetings. And they usually included the Canadian MLA. And as John has told you, it was not unusual for a large number of delegates both from the U.S. and from all around the world to receive from Michael restaurant reviews and travel tips about a certain city weeks before the particular event. Like John, I was one such beneficiary.

Michael was a great friend to the CMI. And as all good friends should be, he was a critic where necessary. At the Buenos Aires Colloquium a couple of years ago, he provided advice to the CMI Charitable Trust as to how it should use its funds. As Patrick Griggs, one of my predecessors (an ex-President of the CMI) has described it to me recently, Michael was thoughtful and prepared to be provocative if he felt that suited his purpose.

As a result of the comments he made in Buenos Aires about the Charitable Trust, Patrick tells me we are in the process of changing how we use the money. So he had a direct influence in that respect.

I want to talk a minute about the CMI Charitable Trust because it meets the expenses of the CMI members who lecture at the International Maritime Law Institute, IMLI, in Malta, and Michael was one of the regular contributors in lecturing at the IMLI. And in preparing these remarks, I asked the Director of the Institute, Professor David Attard, to let me know how the Institute regarded Michael's contribution, and I can only quote his response. He said:

Michael Marks Cohen was one of the finest admiralty lawyers. He had a career spanning over 40 years in admiralty law, marine insurance, commodities trading, and international arbitration -- areas in the development of which he contributed significantly. He was a unique academic. He taught the admiralty course at Columbia Law School for more than 30 years.

I recall him saying that when he first studied maritime law, the course was not based on experience in the field and that he felt after being out in practice, there were insights that students deserved to learn.

It is in the capacity of the lecturer that the IMLI students remember him. He taught according to the Socratic method, but with a light touch and sense of humor. As he used to say: 'Students respond more enthusiastically if you can make clear that you are not mean and that you are attempting to use the dialogue as a way of advancing knowledge. And I can get the students to focus on the material a little more closely if their adrenaline is flowing.'

Above all, Michael Marks Cohen was a very kind-hearted person and very generous with his time and knowledge. He always supported IMLI's work, and his generous book donations contributed to the

Institute's library holdings. He will be sadly missed at the IMLI.

I should add that the IMLI students come from all over the world, so Michael's influence will be felt around the world for many years to come through those students.

When attending the US MLA Spring Meeting in New York a few years ago, I attended one of Michael's lectures. He told me beforehand about the Socratic method that he would be using. He was teaching in the afternoon to a gathering that, I am sure, wished they were doing something else and perhaps needed the CLE points. Michael's method of teaching, I observed, provoked the students into taking an active part in the lectures and kept them awake.

The same must be said of his interventions in the working sessions of the CMI meetings and Assembly meetings. He kept us awake, he kept us thoughtful, and he kept us on our toes. He will be greatly missed at all future CMI meetings.

Thank you, Mr. President.

MR. PARRISH: Thank you, Stuart.

(Applause.)

MR. PARRISH: Similarly, the next MLA Report will have a remembrance of Michael. I'm sure it will be forthcoming shortly.

At this point, I want to, as I said before, invite you memoriam guests to stay, but also allow you to gracefully exit if you'd like to at this time. For all of those on the wall, we have lots of chairs here. This is a nice break. There are a lot of singles in the middle. There's a cluster here up front. Unless you really want to reserve a chance to sneak out, come on and have a seat.

We're going to move into our committee reports quickly, but before that, I would ask Dennis Minichello – Dennis, are you still here? I didn't catch him before he left the room. I want to put him

into the agenda. Dennis, Dennis Minichello, at this point, if you would come up and say a little bit about the survey.

MR. MINICHELLO: Thank you, Mr. President. We issued a survey, which all of you should have received by an e-mail blast. And the survey was directed at the membership to try and gather information about how all of you feel about the Association, to the extent to which you participate in the Association, and to solicit opinions, viewpoints, helpful information, and how we can make the Association better going forward.

We received a fair response. And I use that word "fair" because we received approximately 80 responses. Which is typical for surveys that have gone out in the past. However, we would like to receive more responses, and I understand that copies of the surveys, for those of you who did not have the opportunity to fill them out online, are going to be available. Is that correct? Available at the desk out front here. And also, if you don't get one out here, next week we're going to send out another e-mail blast, so you should be able to get it online. And I really encourage all of you who have not had the opportunity to fill this form out, to please do so. We want to gather as much information as we possibly can, so that we can provide useful information to the leadership of the Association in the hopes of continuing to make this one of the best professional associations in the United States. That ultimately is our goal, of course. So please do take the time to fill it out. It's not long. It's about 13 or 14 questions. Pretty simple to fill out. And I will look forward to everyone's response.

MR. PARRISH: Thank you, Dennis.

We are now moving quickly into the committee reports. It's 10:40. I have now learned the lesson when you give a preacher a promise to use 10 minutes, it will, at least, exceed 20. So I really need to ask you chairs to do as we talked about all week, and that is: Do not exceed five minutes, hopefully three.

Norm Stockman, Young Lawyers. Time starts when you hand your card to the reporter. The clock is ticking.

MR. STOCKMAN: Mr. President, officers, directors, members, and distinguished guests. The Young Lawyers Committee met 18 hours ago at the offices of Holland & Knight. I would like to thank Holland & Knight, Chris Nolan and Mike Daly, for their hospitality. We had in excess of 40 people in attendance.

Our feature presentation was a panel discussion entitled Former Chairs/Fresh Perspectives. We were fortunate to have Past Committee Chair Denise Lautmann, who is probably better known to you as Denise Blocker, Andy Tsukamoto, and Alex Giles. Denise brought wine. Andy discussed his founding of Theoretically Quarterly, which is our newsletter, and Alex Giles regaled us with stories of the Young Lawyers Committee.

They also spent some time giving us their thoughts on the impact of the Young Lawyers Committee on their professional and career development. And on behalf of the Committee, we give our sincere thanks for their time and insight.

We also heard from Kevin Thornton on those topics as well.

We were fortunate to have President Bob Parrish and First Vice President Bob Clyne in attendance. President Parrish spoke to us about the Young Lawyers Committee and the future of the Association, and his excitement of seeing the vibrancy of that future.

We also learned that he had one year and two hours left in his tenure and that, at present, the most important aspect of his career development is the Labrador and the ball.

We heard from our Committee liaisons and also heard about our Committee's work, which you will hear about later with the standing committee reports.

Finally, we presented a gift of appreciation to our outgoing Chair, Betsy Bundy. We will miss Betsy's leadership, service and

energy, but we look forward to seeing more of her in the future in this Association. The Committee's new officers will be me as Chair, Blythe Daly of New York as Vice-Chair, and Jennifer Porter of San Francisco as Secretary.

It occurs to me, as I list the past and present leadership of the Committee, that it was only fitting that following our meeting, the Healy Lecture commenced with a topic of Celebrating Women on the High Seas.

As is our tradition, we reconvened our meeting last night in the Village at a place called Amity Hall. Arrangements were made by Pamela Schultz of San Francisco and Susan Lee of New York, both of whom are owed our thanks. Our cocktail hour was sponsored by SEA Limited in what is becoming a tradition.

Attendance was very strong at our cocktail hour, and we had a number of gray hairs in attendance. Among them were some of the leaders of the Association, but their identities are being withheld due to privacy concerns.

In closing, I want to give a special thanks to President Bob Parrish for flipping the schedule and putting the Young Lawyers' report first. That saves me the trouble of having to get up out of bed to come to this meeting to give the report. In fact, I just received a text from Betsy, "If you missed the after-after party, it is continuing now." And if you leave within the next five minutes I think the bar is still open.

And, Mr. President, that concludes my report.

MR. PARRISH: Thank you. At three minutes and 33.7 seconds, you get another year as chairmanship.

Next is Uniformity, Dan McDermott, followed by Stevedores.

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

Uniformity met on Wednesday afternoon at the offices of Marshall Dennehey. We had a nice turnout. CLE credit was offered. Our featured speaker was Wylie Spicer, Of Counsel to Norton Rose, to speak from Canada, who made a PowerPoint presentation on the changing Arctic. And as we heard briefly before, how to deal with the Arctic is becoming increasingly more important.

Mr. Spicer addressed the issues of maritime jurisdiction and national boundaries of the Arctic region. This is important because there are huge amounts of untapped natural resources in the Arctic region. There are trillions of cubic feet of natural gas and billions of barrels of oil. Many of the natural resources are located in the seabed and drilling is not even necessary for access.

He discussed various claims that countries are making in the Arctic region, and he referred to the application in 1982 at the UN Convention of Law of the Sea on those claims.

Mr. Spicer also discussed the evolution of shipping routes in the Arctic and the need for uniformity, as far as laws are applicable to ships in the Arctic shipping routes. Often the ships will pass through waters controlled by different nations and will be subject to different regional rules and regulations. More Arctic shipping routes are expected to open in the next 50 years due to the melting of the ice caps. These new shipping routes will be very desirable for some nations, because they will save a lot of time on their voyages. The routes will impact on the volume of shipping through the Suez and Panama Canals.

We discussed the need for rule of law through polar shipping routes, particularly with respect to pollution. An Arctic Council has been formed and a Polar Code set up under the IMO has been implemented but not yet formalized into a treaty.

The International Union of Marine Insurers (“IUMI”) is establishing an Arctic guideline of best practices for hull and machinery and pollution insurance. A joint committee of Lloyd’s Underwriters is doing a risk assessment for voyages to the Arctic.

Wylie presented a position paper on Arctic shipping, which highlighted the need for a mandatory uniform regulatory framework for Arctic shipping to ensure maritime safety and environmental protection, the development of maritime infrastructure that supports its safety and environmental protection, the full participation of shipping nations, full market access, freedom of navigation, and for legal clarity, transparency of national regulations and reducing bureaucracy and setting appropriate fees for services.

This was a difficult act to follow, but my Vice-Chair, JoAnne Zawitoski filled in admirably. She presented two cases. The first one dealt with the issue of employer liability under *respondeat superior* theory where a longshore worker fell asleep driving home after working three consecutive shifts during a holiday weekend. The Maryland Court of Appeals found no liability on the part of the employer. *Barclay v. Briscoe*, 427 Md. 270 (2012).

The second case, *Marine Repair Services of Maryland, Inc. v. Ports America Chesapeake, LLC*, FMC No. 11-11 (January 10, 2013), was tried before the FMC in which a shipping violation was alleged. A private entity dredged a 50-foot berth to handle Panamax type vessels where the municipalities did not have the funds to perform the project. This is going to become more important as municipalities are strapped for funds, as we all know. Accordingly, the private sector is coming in and helping out.

In this case, a 50-year terminal lease was awarded to a vendor who did the dredging. What had previously been a public terminal now became a private terminal with a lease. The FMC ruled in favor of the private entity upholding the lease and that it was not a violation of the Shipping Act for the lessor to refuse access to a competing repairer.

This is my swan song with the Uniformity Committee. I want to publically thank JoAnne Zawitoski and Jared Washkowitz for their support and to wish Kevin O'Donovan, Philadelphia, who will be filling in for me all the best. That concludes my report.

MR. PARRISH: Thank you, Dan. Stay there. I want to thank you very much for working with me. You have been a fabulous chairman. You and I have talked about the significance of Uniformity in our structure, and I want to thank you. And you have the usual Past Chair Certificate.

MR. McDERMOTT: Thank you, Bob. I appreciate it very much.

MR. PARRISH: You also set another standard. You're 4.29.8.

Next we have Stevedores followed by Salvage. Nash Bilisoly.

MR. BILISOLY: Thank you, Mr. President. I'm also reporting for Tony Filiato, who is the present chair and out of the country.

The Stevedore and Marine Terminals Committee met on Thursday at Holland & Knight, and we appreciate their hospitality. And Vincent Foley was very helpful to us.

We had a large crowd. Tom Langan gave his usual report, legislative and legal updates, under the Longshore Act. JoAnne Zawitoski also reported on the FMC case – I'm not sure it was the same one, but it was the one involving competitive practices in the Port of Baltimore, which is quite important throughout the nation at this point.

Deborah Waters reported on the progress of the ILA negotiations nationwide. John Ryan led a discussion on the beginning of the progress of ratification of the Rotterdam Rules, and Doug Wheat reported on the legal ramifications in regard to the BP oil spill in New Orleans.

Mr. President, I think I'm in the lead. Thank you.

MR. PARRISH: You've got a strong future, young man.

Bill Storz, Salvage, followed by Jeff Moller, Regulation of Vessel Ops. Thank you, Bill.

MR. STORZ: Hello. The Salvage Committee met on Thursday in the offices of Reed Smith uptown. Twenty-four people were in attendance along with the Admiralty Counsel of the Navy, Captain Fisher.

We had a good program. We lead off with Dagmar Etkin giving a brief on her work with NOAA to determine the risk of oil spills from shipwrecks that are in U.S. coastal waters.

Richard Gunn, a London partner from Reed Smith, who is actively involved with the arbitration of Lloyd's Open Form Salvage Agreements, was in attendance. He discussed ongoing changes to the arbitration provisions associated with the Lloyd's Open Form. He gave us a tutorial on the recovery of attorney's fees in the U.K., and he also got into some detail on the problems that salvors have in obtaining security from all of the cargo interests in container cases, where there obviously could be thousands of different cargo interests.

Robb Hyde, the counsel for the Navy Supervisor of Diving and Salvage, gave a very interesting PowerPoint presentation on an unfortunate Navy casualty involving USS GUARDIAN, a wooden hull mine sweeper that ran aground on a Philippine cargo reef recently. The decision was made based on conditions to simply remove the wreck rather than attempt salvage.

It was a very interesting case because the ship was in about 20 feet of water on the reef. To seaward about 100 feet, the bottom drops off and you are in about 1,000 feet of water, so some of the typical methods of extracting a ship using beach gear, anchors, et cetera, were not available. Instead they had to rely on a heavy lift ship using dynamic positioning to keep it in place.

Art Mead of Crowley Maritime was present. He discussed the ongoing parbuckling and extraction of the COSTA CONCORDIA cruise ship from Italy.

And finally, Jason Harris, our Vice-Chair and next Chairman, gave us his salvage update report. That's a report on salvage case law that's prepared by Jason and also by the Young Lawyers. We have uploaded that to the Salvage Committee website.

Thank you, Mr. President.

MR. PARRISH: Bill, again, thank you for your kind leadership. We had a lot of activity with your committee, which was before my tenure, but I know how helpful you were to Pat Bonner. Here is your certificate. Thank you very much.

Next is Jeff Moller, Regulation of Vessel Ops, followed by Eddie Powers – followed by Lars Forsberg on Recreational Boating.

MR. MOLLER: Mr. President, MLA officers, distinguished guests, ladies and gentlemen. The Committee on Regulation of Vessel Operations, Safety, Security, and Navigation has met three times since the MLA's last general meeting. We were able to pull together, on short notice, a meeting in Washington last fall, and we met twice this week, once in Washington and once in New York. Both of this week's meetings were held jointly with the Committee of Government Lawyers and the Committee on Marine Ecology and Maritime Criminal Law.

A written report was submitted regarding last October's meeting, so I will not discuss the subjects covered then, except to thank Captain Melissa Bert, who had relieved Admiral Steve Poulin as Chief of the Coast Guard's International Maritime Law Division, who was making her maiden voyage before an MLA assembly and did very, very well, and to thank Dave Sump and Troutman Sanders Firm for hosting us on very short notice.

I will submit written reports regarding this week's two meetings also, but here are some highlights specific to the regulation of Vessel Operations Committee. The chairs of the other two committees will be providing additional details in their remarks.

The meeting in Washington was attended by 44 members and friends and hosted by Winston & Strawn on Tuesday. The meeting in New York hosted by Holland & Knight was attended by 65 members and friends including 8 people who attended by conference call.

In D.C., we were honored by the attendance of Rear Admiral Fred Kenney, the Coast Guard's General Counsel and Judge Advocate General. The group was addressed by Staff Attorney Jen Mehaffey and by Mr. Dana Goward, the Chief of the Coast Guard's Office of Marine Transportation Systems. In New York, Captain Melissa Bert attended and presented.

Among the subjects addressed by the Coast Guard folks was, as Rear Admiral Kenney mentioned this morning, the upcoming conflict between the Coast Guard's ballast water regulations and the EPA's new Vessel General Permit, which goes into effect in December. The new regulatory program on TWIC readers was addressed by both Ms. Mehaffey and Captain Bert. The *Lozman* case¹ was also discussed by Captain Bert, remarking that the Coast Guard was pleased with the outcome.

The Maritime Labour Convention, which goes into effect in August was discussed, as was the IMO's proposal regarding investigations of crimes at sea, voluntarily assigning to the master of vessels the preliminary investigatory responsibilities.

Captain Bert discussed, in a very enlightening way, the challenges posed by the increased activity in the Arctic from tourism, transit, and energy exploration, and also discussed developments in the law of piracy.

Mr. Goward discussed national ocean policy, including the conflicts in usage of the ocean presented by the numerous planned wind energy farms and transportation patterns that are well established.

¹ *Lozman v. City of Riviera Beach*, 133 S.Ct. 735, 2013 AMC 1 (2013).

Two committee members also made presentations. Vice-Chairman Larry Kiern twice gave remarks on legislative developments, which he delivered in his typically enthusiastic, enlightening, and entertaining manner. And Jon Waldron presented on the regulatory landscape in the offshore arena in the post-DEEPWATER HORIZON era.

At the Washington meeting, we were also pleased to have Joseph Cox, the Executive Director of the U.S. Chamber of Shipping, appear and present on the subject of the Maritime Labour Convention in 2006, which has been ratified by the majority of maritime nations. It goes into effect this August. Joe did not think that the prospects of U.S. ratification were all together hopeless, which is why he accepted our invitation to speak, but he would not bet any substantial sum that the currently constituted U.S. Senate would ratify an international treaty with both the words “maritime” and “labour” in its title.

Finally, I want to mention that through the efforts of Past President Bonner and current President Parrish and owing to the Coast Guard’s generosity, the MLA now has a seat upon the advisory committee known as the Navigation Safety Advisory Committee. As Chair of the evidently most relevant committee, I was given the privilege of sitting in that seat and representing the interests of the MLA. The committee meets twice annually to discuss issues regarding navigation safety and proposed amendments to the several sets of navigation rules. I was pleased to attend the two-day meeting held this past April in Arlington, Virginia which addressed topics as diverse as lighting for small passenger vessels and the particular problems posed by unmanned autonomous vehicles.

The last thing I wanted to recommend to the group was referring to the Coast Guard’s wonderful “Homeport” website, which you can find at homeport.uscg.mil. It covers all of the advisory committee activities and all of the Coast Guard’s regulatory activities that are of interest to our members and our clients.

With that, my remarks are concluded, Mr. President.

MR. PARRISH: We'll see if you get a letter next week.

Lars Forsberg followed by Eddie Powers on Practice and Procedure.

MR. FORSBERG: Recognizing the commanding presence of our President here, I just wanted to recognize the diverse group of speakers we had yesterday at the New York Yacht Club for our Recreational Boating meeting. We had 62 members and guests present.

To start with, we had Margaret Podlich, who is the President of BoatU.S., which is almost a two million member organization of recreational boaters. She talked eloquently on legislative efforts, safety initiatives, and educational programs. Bob Toney, who is the CEO of National Marine Liquidators and Marine Services, spoke on the market and updates of new and used vessel sales. Then followed Rik Van Hemmen of Martin Ottoway. He spoke with great knowledge of the devastating effects of Hurricane or Super Storm Sandy particularly in the storm's area, but very relevant to other areas in the United States. He gave his perspective from a surveyor's point of view, immediately followed by Nancy Poppe, who is the North American Yacht Practice Leader from Willis Marine. She spoke also on Sandy and other relevant areas from the broker and underwriter's perspective, indicating that there were approximately \$650 million of claims so far from Hurricane Sandy.

Kent Roberts, our member here, spoke from his perspective on the *Lozman* case. Others have spoken on it, but his perspective was on the effects and issues raised by this case on marina owners and harbormasters. It was very, very informative. Followed by Gavin O'Hare, director of CED Technologies, whose topic was working with engineering experts in marine claims and litigation. This is your primer on how to avoid a *Daubert* challenge.

Now, our award winning, Pulitzer Prize winning newsletter, *Boating Briefs*, is available in the back corner here. Our member Daniel Wooster from Palmer Biezup put it together. He compiled it, edited, and published it. And I recommend it to all of you.

Finally, Todd Lochner from the Annapolis area spoke on the Uniform Certificate of Title for Vessels Act.

Again recognizing the commanding presence of our President, thank you very much.

MR. PARRISH: Thank you, Lars. At this point, I would call on Ed Powers. Before I do that, I want to declare a quorum for purposes of voting at the general meeting.

Thank you, Eddie.

MR. POWERS: Thank you, Mr. President.

The Practice and Procedure Committee met Wednesday morning at the offices of Carter, Ledyard & Milburn, who I thank for their gracious hospitality. We began the meeting with a thoughtful and impressive PowerPoint presentation by John Cleary of Vedder Price regarding the Supreme Court's recent decision of *Lozman v. City of Riviera Beach*. John participated in the drafting of the MLA *amicus* brief filed with the Supreme Court. He also attended the oral arguments. John provided an insightful analysis regarding the *Lozman* holding and its possible ramifications moving forward on everything from marine financing issues to personal injury claims as related to vessel status.

The committee also unanimously passed a resolution concerning a proposed change to Rule 82 of the Federal Rules of Civil Procedure. Outside there was a handout, which describes essentially the background, and on page 3 is the resolution. I'm not going to go into it deeply. I hope you've had a chance to read it.

But by way of background, Professor Ed Cooper of the University of Michigan School of Law is the reporter of the

Judicial Counsel's Advisory Committee on the Federal Rules of Civil Procedure. A couple of months ago he had contacted Bob Zapf about the need to change Rule 82, largely because of what had happened with Congress repealing 28 U.S.C. § 1392 regarding the district court venue statute and adding 28 U.S.C. § 1390(b).

As a practical matter, Rule 82 still refers to the old § 1392. Last month I appointed a working group consisting of past committee chairmen Bob Zapf, Jim Bartlett, and Josh Force, as well as the participation of Professor Robert Force of Tulane University and committee member Sam Blatchley.

We had several conference calls to kick around and debate the proposed – what needed to be done, and after long and arduous fights, Bob Zapf, I think, simply summed it up by saying that the easiest fix and the simplest fix was also the best fix, and that was simply to replace the language in Rule 82 by taking out the reference to § 1392 and replacing it with § 1390. The resolution is on page 3.

As I mentioned, Mr. President, it was passed unanimously by the committee, and pursuant to Section 504 of the by-laws, Mr. President, I would ask that the resolution be voted upon by the general membership. And if it passes, I would ask that you, Mr. President, submit the resolution to Professor Cooper for consideration by the Advisory Committee.

MR. PARRISH: Is there a second?

MEMBERS: Second.

MR. PARRISH: I want to ask if there is any need for discussion. Obviously from the constitution of this sub-group, the full force and power of the intellect of this Association and people who have been watching these rules as long as I've been around, particularly Bob Zapf, have looked at this as a particularly vanilla amendment, but I don't know if there need be any further discussion before a resolution goes out from this Association under my name. So if there is any discussion, I would call for that now.

All in favor?

MEMBERS: Aye.

MR. PARRISH: Opposed?

Thank you, Eddie. If you want to take any more time, you can.

MR. POWERS: That concludes my report. Thank you Mr. President.

MR. PARRISH: Offshore, Brad Jackson followed by John Bradley, Maritime Bankruptcy.

MR. JACKSON: Mr. President, officers, directors, distinguished guests, and my many friends out there as fellow members. My parents were newspaper folks, so we'll make this easy. Who, Offshore Industry Committee; what, meeting; when, Thursday -- excuse me, Wednesday afternoon; where, the Seward firm, for which we give our thanks for the space; and, why, well, because we meet.

Our particular focus this year, as was the apparent focus of many committees, was the *Lozman* decision and our view that the U.S. Supreme Court is the best friend of the maritime lawyer. The reasonable observer standard was critiqued in a brilliant fashion through PowerPoint by Professor Michael Sturley of the University of Texas Law School. We were fortunate to have Professor Sturley. He was intimately involved in *Stewart v. Dutra* and the *Lozman* case. I won't tell you every point that he made, but one of the most fascinating was the standard that a vessel be able to generate electricity, along with slides of Old Ironsides, the sailing ship which could not generate electricity, and then he reminded us that the Supreme Court had earlier told us that a jet ski is a vessel.

So *Lozman* was carefully picked apart. It was an excellent meeting. And that concludes my report. I cede the remainder of my time.

MR. PARRISH: Stand by, Mr. Jackson. You shock me. You obviously did that intentionally to disarm me, didn't you? One of my closest friends, I expected much more criticism. Brad, thank you for your service. Here is your outgoing certificate. Thank you.

MR. JACKSON: It's been a pleasure.

MR. PARRISH: Come on up. Don't be afraid. John Bradley. This is a new committee with John as the inception Chairman, Bankruptcy and Insolvency, followed by Lisa Reeves of Marine Torts.

MR. BRADLEY: Good morning, Mr. President. And thank you.

I am John Bradley, Chairman of the Committee on Maritime Bankruptcy and Insolvency. Larry Rutkowski of Seward & Kissel is Vice Chairman and Kevin Walters of Chaffe McCall in Houston is Secretary. I would like to publicly acknowledge and thank Larry and Kevin for their invaluable assistance in getting our Committee off the ground.

As you know, the Committee on Maritime Bankruptcy and Insolvency is the newest MLA Standing Committee, having been formed by the Board in 2012. We have attracted much interest from the Association in our first 12 months. I am proud to say that the Committee currently has 40 members, up from 25 just one year ago.

In our first year, at the request of our President, we researched, prepared, and submitted the Association's response to the Comité Maritime International's Questionnaire on Cross Border Insolvency. This project, which was completed in October 2012, consumed over 100 attorney hours at four member law firms. National maritime law associations from nine other countries also submitted completed questionnaires. Copies of all completed questionnaires can be found on the CMI website.

Yesterday, we held our second formal Committee meeting at the offices of Vedder Price. Approximately 28 Committee members

and invited guests attended the meeting in person, including two foreign lawyers, Mr. Yosuke Tanaka of Tokyo and Dr. Oliver Peltzer of Hamburg, plus three Committee members attended by telephone.

As we reported during the 2012 General Meeting, in 2005 Congress added Chapter 15 of the Bankruptcy Code, which was modeled on the UNCITRAL Model Law on Cross-Border Insolvency, and which replaced former Bankruptcy Code Section 304 dealing with bankruptcy proceedings in the United States that were “ancillary” to foreign bankruptcy proceedings.

The international shipping industry has been and continues to be a large consumer of Chapter 15. By the Committee’s count, approximately 16 shipping cases under Chapter 15 have been commenced in U.S. bankruptcy courts since passage of Chapter 15. As a service to the Association and its members, one of the projects undertaken by the Committee has been to track these cases in spreadsheet format – the spreadsheet showing by docket number and case name, the judges who have handled these cases, the foreign proceedings recognized in the U.S., and the types of unique relief afforded by the court in these cases. The spreadsheet will be posted to the Committee’s website shortly. At our meeting yesterday, we reviewed current case developments, and discussed procedural and substantive legal issues encountered by the maritime bar in cross-border insolvency cases involving international shipping companies.

Following our Chapter 15 discussion, Dr. Oliver Peltzer of the Dabelstein & Passehl law firm in Hamburg gave a very informative presentation on the new “Chapter 11” restructuring laws that took effect in Germany last year. Although many German shipping companies appear to be on the brink of insolvency, Dr. Peltzer reported that the new restructuring laws have not been successfully implemented in any shipping insolvencies to date.

Lastly, in November 2012, the Overseas Shipholding Group (“OSG”) – the largest tanker operator in the world – filed for Chapter 11 protection in Delaware. Many of the Association’s members have been actively involved in this case – representing the debtor,

ship owners, and financial institutions, among other parties. One aspect of the OSG case that attracted the Committee's attention was the large number of charter parties – over 25 in all – that have been rejected by OSG since the inception of the case under authority of Section 365 of the Bankruptcy Code.

At yesterday's meeting, we had an open and very lively discussion on the financial, legal, and practical issues encountered by shipowners upon rejection of their charters by OSG. These issues include the performance and non-performance by OSG of redelivery conditions set forth in the various charters and bankruptcy rights of set-off and recoupment with respect to the shipowners' obligations to pay for bunkers and lube oil on board their vessels upon redelivery. With the assistance of bankruptcy counsel from Seward & Kissel and Vedder Price, we also discussed the preparation and calculation of lease rejection claims, and the distressed debt market for the monetization and sale of those claims. The Committee will continue to monitor developments in the OSG case and will report further as events warrant.

Mr. President, that concludes my report on behalf of the Committee on Maritime Bankruptcy and Insolvency.

Thank you.

MR. PARRISH: Thank you so much.

Lisa Reeves, Marine Torts, followed by Joe Grasso, Marine Insurance.

MS. REEVES: Thank you, Mr. President. Good morning everyone.

Marine Torts and Casualties had record attendance yesterday, close to 100 people, and perhaps more. The meeting was held at Seward & Kissel's new conference room, and we thank them for their hospitality.

We had three excellent presentations, the first by Andreas Brachel of Norway and Nick Platt of London, both in charge of

Gard's environmental and casualty response efforts. They discussed casualty response from the club's perspective, in particular wreck removal, and problems dealing with government authorities around the world. They have indicated that in some instances it may even be necessary to have two salvage masters, one to deal with the authorities and one to deal with the actual salvage.

Then we heard from Rich Whelan of Philadelphia, who updated us on the ATHOS I litigation. Almost ten years ago, the tanker ATHOS I struck a submerged object in a federal anchorage, during her approach to an oil terminal. The anchor owner was never identified, and it was clear that the anchor had been on the bottom of the anchorage for some time.

The vessel owner, interestingly, actually recovered most of the pollution response costs from the National Pollution Fund Center, but also brought a claim against Citgo, who was not only the terminal operator, but also owner of the cargo and the charterer.

The district court held that the federal anchorage was not within the approach to the berth to the extent that that would create a duty on either the berth owner or the charterer to use side scan to locate any such obstruction. That is now on appeal to the Third Circuit. The issues are safe berth from a tort perspective, which was our main interest, but it also has issues of charterer's liability and whether the ship is a third-party beneficiary of a charter party when there isn't direct privity between the owner and the ultimate charterer. So keep an eye on that. It could have implications all over the country if the court decides that the approach in a federal anchorage is now the responsibility of a terminal operator.²

² Two weeks after our ATHOS I presentation, the Third Circuit issued a decision concluding that the vessel owner was a third-party beneficiary of the safe berth/port warranty contained in the voyage charter to which they were not a party and that the federal anchorage in which the ATHOS I struck the anchor constituted the "approach" to the terminal. The Third Circuit affirmed the district court's decision that there was no negligent misrepresentation by the terminal operator. The case was remanded to the district court with direction to more fully develop the facts of the case and ascertain the standard of care, whether it was breached, and if so, whether the breach caused the accident. *In re Frescati Shipping Co.*, 718 F.3d 184, 2013 AMC 1521 (3d Cir. 2013).

Finally, Paul Hofmann gave us his perspective on the *Lozman* case. He believes that this Supreme Court case has very important implications in maritime law, and in particular with respect to marine construction. He argues that we're going to see a return to *DiGiovanni* and other cases that talk about work platforms, et cetera. The name of his presentation was "What Stewart Giveth, Lozman Taketh Away."

Finally, we are revising our personal injury newsletter, which has stumbled a little bit since Paul Edelman stepped down from preparing an excellent case summary for many, many years, and Deborah Waters has agreed to take over that project with the help of others. And I'm happy to say without any prodding, I've had at least four people come up to me and volunteer for our biannual newsletter.

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

MR. PARRISH: Thank you, Lisa. Joe Grasso, Marine Insurance, followed by Frank Nolan, Marine Financing.

MR. GRASSO: Thank you, Mr. President. The Committee on Marine Insurance and General Average met Wednesday morning at the offices of Seward & Kissel. We would like to extend our thanks to Seward & Kissel and Bruce Paulsen, in particular, for their hospitality,

We had 70 members and guests including foreign lawyers. We had an update on our ongoing project on the definition of ocean marine insurance, a scintillating topic. It was assigned to our committee by Past President Bonner. We are nearing the completion of that project. It builds on work done by Gray Staring about ten years ago. And we'll have, as its goal, a proposal for a uniform definition of marine insurance.

We had the introduction of our newsletter, our committee's newsletter, very ably edited by Brenda Marmol. And our newsletter includes, of course, what else, the *Lozman* case. And Gene George

pronounced it Lozman. So that's two votes for Lozman and three votes for Lozman so far.

MR. STURLEY: Who said Lozman?

MR. GRASSO: Thank you, Professor Sturley for clarifying that.

We had Jim Craig in attendance. He is the President of the American Institute of Marine Underwriters. He gave us an update on what the Institute is up to in terms of their committee work. They're having a big marine insurance issues seminar next week. For anyone interested, you can find information and registration information on the AMIU website.

We had reports from our three Subcommittees. For General Average, we've been asked to shepherd a response to a CMI questionnaire on the proposed or possible revision of the York-Antwerp Rules, and there's also going to be feedback, hopefully, from the Committee on Carriage of Goods and the In-House Counsel Committee on that. It's been referred to the American Institute of Marine Underwriters as well.

On our Hull and P&I Subcommittee, John Woods reported that he intends to revive the project to annotate the Hull Clauses, and for our Cargo Subcommittee, John Ryan announced that he is planning a project on an annotation of the cargo clauses.

Finally, we had two presentations. We had Dieter Schwampe from the Dablestein firm in Hamburg give us a presentation on cover for latent defects, faulty design, and bad workmanship under American, English, German, and Norwegian markets. And it was a comparative analysis. He did a great job on the American part. He'll be presenting that with lawyers from the other jurisdictions for the IMCC in Dublin in September as well.

And finally, a very entertaining presentation by Max Hardberger, who is currently a resident in Somalia -- Max is here today -- on the present and future of piracy on the Somalia coast. And Max had some great photographs, some great insight on what's

happening with piracy in Somalia, and he's currently at work on building a port on the coast of Somalia.

That concludes our report.

MR. PARRISH: Thank you, Joe. Right now Marine Finance. The whole world is watching.

MR. NOLAN: Mr. President, should I use brother Brad's time first? Before –

MR. PARRISH: No time spills over. Three, four –

MR. NOLAN: Mr. President, officers, my fellow directors, uniformed protectors, and esteemed foreign colleagues. I don't think I left anyone out except maybe the waiter.

I did want to tell you that on the way down, I had a great day reminiscing. And also my reminiscence started when I got on the subway at West 86th Street to come down here. I was tapped on the shoulder by four young men, about my age, from farther uptown, who claimed that they were the Drifters, and they offered to sing Under the Boardwalk. There were four of them, so I had no choice and said please go ahead. And it was really – it was really a wonderful New York experience and it only cost me a dollar. So for those of you who think you can't have a good time at a reasonable price in New York, I...

(Applause.)

We -- the Marine Finance Committee met on Wednesday afternoon at the offices of Vedder Price, where I have some influence left. And we started with subcommittee reports. We have tried to compress the subcommittee action to shorten our day, which had previously been an entire workday. We're moving to a model of working groups, which are more flexible. You can start them, you can stop them, and you can accelerate them through the year. We've had a great deal of success with that which I would like to go through with you.

The first piece, and one that I am particularly proud of on behalf of my committee, is the report on the passage by the Marshall Islands Nitijela of the vessel leasing statute, which has rather the pedestrian name of Maritime Act Number 25 of 2013. I would like to explain a few things about it. What it really does is establish the device of the financing charter. It's for bareboat charters at risk of re-characterization or which wish to be characterized as financial agreements. It's geared to problems that are largely present in the United States and can affect a vessel lessor in a charter financing where a charterer files in the United States Bankruptcy courts, and the title owner is found not to be the true owner, but rather an unsecured creditor.

This new measure has been noticed quite a bit in the trade press. I've already been interviewed twice in *Fair Play* and again in *Seatrade*, which I'm very reluctant to do being a bashful fellow, unlike my fellow comedian, Justice Breyer. So this is now the law in the Marshall Islands. It's something you should all take a look at. There's quite a bit on our website and quite a bit in the press on it. And as I say, it's a signature piece that the Marine Finance Committee is very proud of.

There's another report of new Marshall Islands legislation, which Lars Forsberg I understand, had a substantial hand in for the creation of mortgages on vessels under construction, which is of particular use in Brazil at the present time.

Unfortunately, we next had to discuss *Lozman v. City of Riviera Beach*, in which I was the counsel of record for the MLA, I'm sorry to say. We pointed out all of the things that were wrong in the Court's decision, what a grave danger this was if not handled appropriately for the world of marine financing because it created for us the ultimate snapshot test. The validity and enforceability of a preferred mortgage depends on whether a vessel is a vessel under 1 U.S.C. § 3, at all times while the mortgage is outstanding and not just on the day it was first imposed.

Now Justice Breyer has told us by a seven to two vote that whether a vessel is a vessel is a now-you-see-it, now-you-don't type of question, and can change at any time. More of those craft at the edges of the maritime world are open to question, and I would suggest that a lot of vessels currently -- or things currently purporting to be documented with the United States Coast Guard -- are open to question. This, I'm sure, has been discussed *ad nauseam* around the Association in meetings this week. My partner John Cleary prepared a list of the progeny of *Lozman*, which I think will make a great horror movie, and is bearing out a lot of our worst fears. This is available on the Practice and Procedure website, I believe, and we will make it available on ours as well.

What to do about *Lozman* will be the subject of a working group in the Marine Finance Committee very shortly to consider the advisability of a legislative fix for *Lozman*, particularly with respect to the documentation and mortgaging of vessels. The poor Coast Guard no doubt has got rooms full of documentation for craft which may no longer be vessels after *Lozman*, which brings us to the next point.

MR. PARRISH: Frank, on a serious note, continue on. It was important that you explained *Lozman*, please. You have another two minutes.

MR. NOLAN: Part 67 Working Group. We decided a couple of years ago, reported on it several times since, that we would put together a list of problems in 46 C.F.R. Part 67, which is the documentation of mortgages part of the Code of Federal Regulations. We have done that and offered up some possible solutions. This was approved unanimously by the Marine Financing Committee and by the Fisheries Committee and was offered to the Board of Directors yesterday and was approved for transmission to the Coast Guard for its consideration.

The Coast Guard is involved in this dialogue. There are some issues, which we've been asked to further consider. Those will be wrapped up soon and will go to the Board for supplementary

approval. We're hoping that this is a big help to the Coast Guard and the industry. And I'd say this is an area where we have tried to avoid controversy and just do housekeeping, so that everybody can function better. And we look forward to sending that shortly to the Coast Guard.

We submitted to our members the commentary and proposed form of the CMI Convention on Recognition of Foreign Judicial Sales of Ships. This is coming up for, what may be a final vote -- it remains to be seen -- in Dublin in September. We will have our commentary collected and synthesized and forwarded to the Board probably by the end of June.

Finally, we recognized there were new officers coming to the committee. They're sending me out to pasture because of the time problems, you know. And Margie Krumholz and Steve Johnson will be Chair and Vice-Chair respectively, and Mike Timpone will be the new Secretary.

We're sort of at the margins of a lot of MLA stuff, you know. I've been told in the past, you're not really a maritime lawyer, you're a financing guy, you have stripped pants. But we have our own that we miss. Charlie Brown is one who passed away in the past year and we just reminisced about him for a bit and talked about all of the mentorship, all of the assistance, the scholarship that he presented to us, all of the friendship that he offered to us. And it's difficult to realize that, as we're all getting older and grayer, that somehow if you'll pass by the mirror that you're on your way, too, and pretty soon you'll end up on the President's list, hopefully later rather than sooner.

But that was our meeting. I had a great deal of fun. I've got a spectacular committee. They are dedicated to scholarship and development. They want real results. And I look forward to hearing what my successors will do on this in the future. And this is the last time you'll have to put up with me.

MR. PARRISH: Thank you, Frank. Stand by, please.

The reason for expediting today's meeting is we went to 1:00, 1:15 last year, and I, of course, discussed this with the chairmen and they have been amply warned. I was talking to Brother Nolan about it. He said, "Well, put a rag in my mouth and that will save you half an hour."

MR. NOLAN: My time never started, Mr. President.

(Handing business card to the reporter)

(Applause.)

MR PARRISH: I do want to say one thing. Frank, here's your certificate to hang with the rest of them. But I want to say this on behalf of the Board and the Association. I work on this every day. Frank works on it every day. And he drafted the *Lozman* brief. He tolerated my edits as an intolerable law journal jock. As a veteran I had to whack the commas and semicolons. I appreciate your putting up with that. And certainly in the Association, no one -- no one works more than Frank, on his own dime going abroad. And he's still involved with four or five different projects. Thank you for the great leadership and the mirth at the podium.

We have Katharine Newman, Marine Ecology, followed by Phil Buhler, International Organizations with a few sub reports.

MS. NEWMAN: I'm going to pick up where my colleague Jeff Moller left off. We had a joint committee meeting and Jeff introduced some speakers who were in attendance and we are grateful for the time and effort people put forward to bring us up to date with the recent developments from the past six months.

I also want to give great appreciation to Larry Kiern, who spoke on legislative updates; Jon Waldron, who spoke on custom enforcement trends and changes; Greg Linsin, who spoke about trends in criminal prosecutions mainly in regard to MARPOL Annex I, but in doing so, similarly brought some foresight that could be applied more broadly into MARPOL Annex V, VI, and ballast water.

Luke Reid spoke to us about “Will Magic Fuel Become the Next Magic Pipe?”; Jessica McClellan and Mike Underhill spoke about recent developments in the DEEPWATER HORIZON litigation; and LeRoy Lambert, who was to speak to us at the Fall meeting which was cancelled, was back on the agenda for our Spring meeting to speak about P&I policy issues regarding use of dispersants and also with regards to the Arctic.

I want to thank everybody who gave the time to present and similarly to our membership for participating. If people have further suggestions for speakers or topics of interest that Marine Ecology and Environmental Crimes can present to you, please bring them forward to me and to our committee leadership, and we’ll endeavor to bring it to you.

Thank you.

MR. PARRISH: Fabulous. Thank you, Katharine.

Phil Buhler, followed by Buckley McAllister, Inland Waters.

MR. BUHLER: Thank you, Mr. President.

The meeting of the International Organizations, Conventions, and Standards Committee was held on Thursday morning at the offices of Holland & Knight with 40 persons in attendance. John Kimball, the Chair of our CMI Subcommittee, gave a short overview concerning CMI. He will be providing a special report following this one. John introduced Stuart Hetherington, president of CMI. Stuart Hetherington discussed a number of important developments at CMI, including continued work on the unfinished Convention on Judicial Sale of Vessels, planned complete review of the York-Antwerp Rules, Standing Committee on Maritime Conventions’ efforts to promote some IMO conventions, including passenger liability, cross-border insolvency, limitation of liability, and the further ratification of the Rotterdam Rules.

He also addressed development of a code of conduct for Arctic/Antarctic regions, fair treatment of seafarers, piracy and

maritime violence, and encouraging the participation of young CMI lawyers.

Helen Noble, President of the Irish MLA, was introduced and informed us about the upcoming CMI meeting to be held in Dublin in late September. Vince Foley, our Vice-Chair, reported on preliminary plans for the joint CMI/MLA meeting in New York in 2016. Soren Larsen, Deputy Secretary General of BIMCO, gave a detailed presentation on the emergence of Singapore as a venue for arbitration and an alternative under the BIMCO forum clause. Hong Kong and Shanghai are also vying for this status with the increased influence of Asian shipowners.

Captain Melissa Bert, Chief of the Office of Maritime and International Law of the United States Coast Guard, discussed vessel emissions control areas, EPA vessel general permits, ballast water, the Maritime Labour Convention, and the U.S. Coast Guard response to increased Arctic traffic.

Doug Burnett, the International Law of the Sea Subcommittee Chair, gave an update on the Law of the Sea Convention, advising that it is stalled in Congress and there appears to be no immediate prospect of ratification.

Finally, Boriana Farrar, our Committee Secretary, gave a brief presentation on the exemptions for certain cargos under the International Maritime Solid Bulk Cargo Code.

The details for these presentations will be set out in my written report. That concludes my report, Mr. President. And with leave, I would ask John Kimball to provide the report on the CMI Subcommittee.

MR. PARRISH: Thank you.

John Kimball, please.

MR. KIMBALL: To avoid duplication, my report will be very brief. I just want to say a couple of things about the CMI. We

are very fortunate to have some of the leadership with us today. I hope everyone takes a chance to greet them.

The CMI is alive. It is relevant. It is working on important projects, projects that are important for this organization. The CMI also is taking a hard look at what it should be doing in the future. And it deserves our full support. It is coming to New York in 2016. I hope all of you will be putting that on your calendar and planning to support that meeting.

And as I mentioned before then, there will be a meeting in Dublin in September.

Let me now introduce Stuart Hetherington, who can give you a much more completed report about the activities of the CMI.

MR. PARRISH: From down under, Stuart.

MR. HETHERINGTON: Thank you, Mr. President.

I just want to talk to you a little bit more about Dublin. So firstly, upcoming events and then the work of the CMI that you have heard something about from some of the other committee chairs, who have been discussing some of the projects that we are dealing with.

Firstly, the sexy bit first: Dublin, 29 September. I hope it's in your diaries. You will be welcomed for an evening function on the 29th of September at the Shelbourne Hotel. Helen Noble, the President of the Irish MLA, has been with us this week and may be in the room now, but if you have not seen her, she will give you more detail about the three days of that meeting.

As to the program for the meeting: The first day is very much the Irish MLA session. The two principle areas of discussion will be the offshore sector, dealing particularly with oil spill issues. The second session will be passenger liabilities. The COSTA CONCORDIA is very much on the minds of European and P&I Clubs and insurers generally.

The second day will be CMI projects. You have heard mention of some of them, Cross-Border Insolvency, Limitation of Liability, Promotion of Marine Conventions, and Marine Insurance. (Dieter Schwampe will be doing another presentation in Dublin at that time.)

You have heard mention, in connection with Dieter, of the IMCC Dublin meeting. We have particularly organized the CMI function to be back to back with the IMCC meeting, the London market marine claims meeting that has been taking place for well over ten years now in Dublin. So if you are minded to spend a week or so in Europe, I cannot suggest anything better than coming to Dublin for that week; a few days before our meeting on the 29th of September, you can go to the London market meeting. And, by the way, there's also a P&I Correspondents meeting in Holland during that week as well.

So that is all I want to say about Dublin. You have heard that 2016 will be the next CMI Conference which will be in New York. We are looking forward to that. It is going to be a great event, a mixture of your typical spring meeting, but also a CMI meeting, so there will be plenty of choice, of both social and scholastic things to attend.

Between 2013 and 2016 there will be at least one other CMI event in Germany or in Turkey. That decision is still to be made.

Just on the work program of the CMI, I would invite you to look at the CMI website if you want more information. You have heard Frank mention the Judicial Sale of Ships. That is a project that was not completed, unfortunately, in Beijing. There will be two days spent in Dublin on Saturday and Sunday by an International Subcommittee meeting -- anyone is invited to attend that, if they are interested in that topic -- to try and finish and conclude that project.

Secondly, the Review of General Average, which you have heard mentioned as well, under Bent Nielsen's Chairmanship. There

will be an International Subcommittee meeting on the Saturday and the Sunday in Dublin to discuss this as well.

There are many other topics that CMI is working on. Offshore activities is one, arising from the DEEPWATER HORIZON and the Montara disasters in the Indian Ocean. That project will be discussed in Dublin, and is clearly a significant one in the international community.

Rotterdam Rules have been mentioned. Obviously the CMI is very keen to see that ratified. We all feel, (that is the international community) that we are waiting for the U.S. to ratify, and to follow them. Chet Hooper and I met with the State Department in Washington, to impress upon them the importance that the world community sees in that. Hopefully that will bear fruit, but only time will tell.

I did also want to, specifically, mention Young Lawyers. The CMI has done a lot to engage Young Lawyers in our Conference meetings and other meetings. The MLAUS is excellent. Your Young Lawyers Committee is fantastic. Some of the European countries are fantastic as well. But we want to put you together, have you communicating with each other, learning from each other. The President of the Dutch MLA, Taco van der Valk, has done a wonderful job in creating a LinkedIn group. But I ask you all to please encourage your young lawyers, the young maritime lawyers in your firms, to get involved with that LinkedIn group. And if you feel young enough and “linked in” enough yourselves, please get involved.

Finally, as has been mentioned, we had a session in Beijing, which was an internal naval gazing exercise. There were two major aspects, good things, that came out of that. One is your President Bob Parrish suggested that we set up a small committee outside the Executive Council of CMI to second-guess what we are doing, to look into the crystal ball, see how we can do things better.

I am delighted that Liz Burrell has undertaken the chairmanship of that small committee that is being set up to do that, and I look forward to hearing their suggestions.

The second thing that came out of that -- and I think it's appropriate that I finish on an Irish note -- was that in the preparation of the Discussion Paper that we took to Beijing to assist people in that debate, I came across a letter written by the then President of the Irish MLA, who is known to many of you in this room, Niall McGovern, written in 1997 to the then President of the CMI, commenting about his knowledge and involvement with the CMI and what he got out of it. I think what he said is equally appropriate for all the MLAs around the world.

He concluded his letter by referring to "the poet." We have had a bit of poetry already today, so can I just give you one short poem that he referred to? (He was obviously referring to Yeats.) And his poem was "Think where man's glory begins and ends, and say my glory was that I had such friends."

That is really what the MLAs and CMI is all about. It's friendships, it's renewing friendships at meetings, and I look forward to renewing all of your friendship in Dublin in late September.

Thank you, Mr. President.

MR PARRISH: Thank you, Stuart.

(Applause.)

MR. PARRISH: Stuart is aware that since he is not a committee chairman, I cannot reappoint him. I can, however, urge all of you folks who have been moaning to me about why CMI dues are so high to talk with Stuart.

Buckley McAllister, followed by Kevin Thornton, Fisheries. We're sort of OK. We still need to move on. We're trying to get you out of here before noon. That's not going to happen but...

MR. McALLISTER: Thank you, Mr. President. The Committee on Inland Waters and Towing was joined by 22 people and 2 by conference call. We were lucky enough to have the Association's fearless Secretary, David J. Farrell of Massachusetts, who presented on California's M-580 Short Sea Shipping Study. Mr. Farrell gave us a presentation of the value of government support for Short Sea Shipping routes and the importance of these routes to meet future transportation needs.

We were also joined by Gene B. George of Cleveland, Ohio, representing the Subcommittee on the Great Lakes. He surveyed the challenges presented in his region by invasive species and the difficulties of preserving hydrological separation between the Great Lakes and the Mississippi River Basin.

Mr. George provided an update on the legal conflicts over the Chicago Sanitary Canal and the Asian Carp.

Finally, C. Kent Roberts and Charmin B. Shiely of Portland, Oregon, delivered reports on the *One Beacon v. Crowley* case³ and its implications for increased use of online terms and conditions in maritime transactions.

They also gave a presentation on the *Habel v. Grove Farm Fish & Poi, LLC* case.⁴ This case applied the general inspected vessel provisions of the Code of Federal Regulations to towing vessels even though the subchapter of the regulations regarding inspection of towing vessels has not yet been promulgated by the Department of Homeland Security. Obviously this holds implications for towing vessels.

Thank you very much, Mr. President.

MR. PARRISH: Kevin, thank you -- Kevin? I'm sorry, I'm really trying to run on ahead. Thank you, Buckley.

³ *One Beacon Ins. Co. v. Crowley Marine Services, Inc.*, 648 F.3d 258, 2011 AMC 2113 (5th Cir. 2011).

⁴ 2012 AMC 1591 (D. Hi. 2012).

Kevin Thornton, please, Fisheries.

MR. THORNTON: Good morning, Mr. President, officers, special guests and members of the MLA. I prepared an outline of my speech consistent with our President's admonition that we keep it under five minutes. I watched Brad Jackson's presentation and he kind of did his based upon his parents. So I'm going to follow that same mode. I'm going to throw out my notes.

Your parents were journalists, I understand, Brad. My mom and dad were trial attorneys. So in honor of them, I will dispense with my outline and ramble on for about five minutes in a desperate search for one cogent thought.

But in all seriousness, I'm Chairman of the Fisheries Committee. We had a meeting at Reed Smith. Our gracious host was Lars Forsberg. At that meeting we had 21 members in attendance. We only have about 34 voting members, so I'm quite pleased with the attendance. I would like to think that's due to an interesting agenda, but I think largely it's due to the free lunch and the excellent chocolate chip cookies presented by Reed Smith.

We had three speakers at our meeting. The first speaker gave a presentation on insurance issues and, in particular, the new healthcare issues and also on fraud and computer crimes.

Fisheries people are expanding into international commerce, and our clients and others are doing international transactions, and they've already been the victims of computer fraud with overseas payments and transfers that result in substantial financial losses. The take away was there are certain prophylactic measures that any business can and should do, and there are insurance products available to help with those risks.

We had a second presentation from one of my Cooper Levenson partners, William Hughes, a former U.S. attorney, and a lot of his work now involves law enforcement strategies, the criminalization, forfeiture, and incarceration for fishery violations.

Historically, these involved civil proceedings. Recently, it's morphed into very serious criminal prosecutions. Substantial Federal Court and criminal defense experience is required to defend such matters. These are emerging and serious issues for many commercial fishery businesses.

We had a third speaker, Dr. Kenneth Fisher, from Fisher Maritime Consulting Group. The topic was cost and scheduling risks arising from under-resourced vessel refits, repairs, and conversions that happen in fisheries that do new builds, but they also convert fishing boats and cut them in half and add 10-20 feet. Cost-overruns and delays are endemic in such undertakings. Has anyone seen the movie, *The Money Pit*? If you just add water to that concept, that's what happens.

We had an excellent presentation on our Fisheries Case Summary by Terry Kenneally and Kirby Aarsheim.

And I want to offer best wishes and good luck to our new officers coming in, Mark Coberly, Terry Kenneally, and David Smith. And that ends my report.

Thank you, Mr. President.

MR. PARRISH: Thank you, Kevin. Now I'd like to mention, you are a classic example of the sole practitioner who adds so much to this Association. Kevin, I appreciate your participation. Here's your certificate.

MR. THORNTON: Thank you very much. We have 60 lawyers. I'm the only one that does maritime.

MR. PARRISH: Bob Peltz, Cruise Lines, followed by Ed Radzik, Carriage of goods.

MR. PELTZ: Mr. President, the precision in which this meeting is going is giving me flashbacks to my college days at Duke, where I was a member at the ATO fraternity and the president was a young Bob Parrish.

MR. PARRISH: Give me the pictures and I'll give you an extra ten seconds.

MR PELTZ: I was going to say our fraternity meetings were efficient, but I think the hourglass is something that's new along the way.

The Cruise Line meeting had an overflow attendance at the offices of Freehill Hogan. Thanks to the hospitality and technical expertise of Mike Unger and his staff. Two of our four speakers appeared by Skype, very successfully. We had one, Attilio Costabel, who spoke from Genoa, Italy, about the status of the criminal and civil litigation pending in Italy over the COSTA CONCORDIA.

Mike Eriksen also spoke to us from Florida about the "inequities" of the "antiquated" Death on the High Seas Act. I'm quoting his language. Mike wrote an excellent article about the subject, which was in the Florida Bar Journal and will be published on the committee website by next week.

We were very honored to have Captain Melissa Bert, who was introduced earlier, attend our meeting and talk about various activities of the Coast Guard as they relate to the cruise industry. This included protocols that will be expected to come out of the recent IMO meetings regarding the collection and preservation of evidence involving criminal activities occurring on cruise ships.

We were also very happy to have Curtis Mase join us from Miami. Curtis talked about the litigation presently pending against Carnival arising out of the Carnival Triumph fires.

Our committee publishes a newsletter three times a year. The most recent newsletter was published in conjunction with our committee meeting. In addition to discussing cases that are of interest to the cruise industry and also involving seamen, there are a number of articles in it, including one written by Paul Edelman regarding the status of the Athens Convention, in light of its recent ratification by the requisite ten states.

Since this is my last meeting as Chairman of the Cruise Line Committee, I would like to thank Sean O'Neil for his excellent help as Vice-Chair and also Dana Henderson for her work as Secretary.

Thank you, Mr. President.

MR. PARRISH: Thank you for all your great service, Bob.

Ed Radzik, Carriage of Goods, followed by -- which we'll have a sub report by Chet Hooper.

MR. RADZIK: Good morning, Mr. President, Officers, members of the Board of Directors, fellow members and guests. The Carriage of Goods Committee met on Wednesday, at the AIG, Corporate Conference Center. We had approximately 50 in attendance, including Stuart Hetherington and Helen Noble.

Our thanks goes out to AIG and to Susan Dorgan, our Secretary, for the hospitality in providing the meeting room. The AIG Conference Center is an ideal venue for meetings of groups of our size and purpose. Our principal speaker was Mike Ryan, who gave a paper on the subject of covenants not to sue clauses contained in ocean bill of lading. There has been a resurgence of cases where these covenants have come up, particularly in the area of multi-modal transportation where a bill of lading will typically have a covenant not to sue clause, which would prevent the cargo owners from suing subcontractors of the multi-modal carrier. And Mike gave an excellent presentation of how that case law has been developing. The issue really comes down to whether these covenants not to sue are violative of the Section 3(8) of COGSA, which prohibits any clause that lessens or eliminates any of the carrier's liability. The cases also raise the question of whether these clauses would tread on otherwise a statutory right to sue under another federal statute such as Carmack.

Mike's paper will be available on our committee's website.

Our committee has also been recruited to provide input on the CMI's request for comments to a Questionnaire on the rules of

general average. We've sent out the Questionnaire and have sought volunteers among our committee members. We received enthusiastic participation in that regard, and will form a subcommittee to study and report on the issue, keeping in mind there is a short time table to respond.

Finally, Chet Hooper, a member of the original delegation for the promulgation of the Rotterdam Rules, gave us a report on the status and where they stand in terms of ratification. Chet has reported that there has been some progress, but that progress has been slow. There is a hope that in the second four years of this Administration more attention will be given to the ratification process, keeping in mind that the rest of the world is looking to the United States to be the leader to step forward and ratify the Rules.

Copies of the Cargo Newsletter are available outside. That concludes my report. Thank you.

MR. PARRISH: Thank you, Ed.

Chet, as you step toward the microphone for the 23rd year to report on the prospects of the ratification of the Rotterdam Rules don't restrain yourself, but don't strain credulity!

MR. HOOPER: I thought of -- I was going to announce this is the 22nd annual report of our efforts to modernize the law governing Carriage of Goods.

If anyone knows the Heimlich procedure, it's good because you practically have to swallow the mic to talk.

Anyway -- Ed is correct. Stuart and I -- my last meeting with the State was April 22nd with Stuart Hetherington, where we met with two representatives of State emphasizing the importance that the rest of the world is waiting for the United States. They told us they were trying to smooth over relations with one stakeholder, as they put it, and soon send the ratification package out for interagency review. The ratification package is basically finished. The interagency review, they estimate, will take about two months.

It will go to MARAD/FMC, the Department of Justice, from there back to State, from State to the White House, from the White House to the Senate, and I imagine we're going to want to go down and meet with some Senate staffers when it gets to the Senate.

They haven't given us a definite time of when they think the State Department will release it, but we'll keep bugging the State Department.

Thank you.

MR. PARRISH: Chet, do you want to turn your hat around and do 30 seconds on AMC? 30 seconds.

MR. HOOPER: AMC, yes. Thank you. The AMC 2012 bound volumes are being sent out now. They are dedicated to J.P. Jones, that is, John Paul Jones, not the original John Paul Jones, the professor at the University of Richmond Law School. So you should be getting those soon.

Look at the AMC website. Please let AMC have any comments you have about that website. It's very user friendly, I think. And you don't have to pay for the time you get on it. You get on the website and use it for as long as you darn well please once you subscribe to it.

I'd like to take a couple minutes for *The MLA Report*, ask the committee chairs to please send to David Nourse and to me, all of your newsletters in Word format, and we'll get them out in the next *MLA Report*. Thank you.

MR. PARRISH: Thank you, Chet.

It works out the last standing committee here this morning, ADR Leo Kailas.

MR. KAILAS: Can everybody hear me?

Thank you, Mr. President, distinguished guests. Thank you, officers.

My father was a seafarer, as was my grandfather and great-grandfather, all from the Island of Santorini. For those Eastern Orthodox people here, [speaking Greek] this is our Easter this weekend.

Our committee, thanks to Keith Heard, has had a smooth transition to my chairmanship of the committee. I thank my Vice-Chairman, Peter Skoufalos. We did two case notes newsletters this year, and I have already sent them on to Chet. The case notes are available on the website also.

We met on Wednesday at the offices of Seward & Kissel. We did a mock arbitration. Thanks to Jonathan Lux, who I've seen here today, who acted as our mediator, and thanks to Bruce Paulsen and Bill Honan, who were excellent advocates on the issue of security guards in a piracy situation. It was an excellent presentation, very well attended, and at the end of the meeting Soren Larsen, introduced by Liz Burrell, gave us a brief summary of Singapore's efforts to become a state on the BIMCO form, which they have succeeded in doing. New York remains one of the forums that's a second forum and there are other states now competing for entry. And he gave us a report about everything that's been going on in that regard.

I also should say that we have been working with the Society of Marine Arbitrators in reforming some of their rules and in rewriting some of their rules. The liaison committee and the subcommittee have been working with them, and I thank Jay Paré for his excellent efforts in spearheading some of the modifications to the SMA rules and helping with that.

And that completes my report. Thank you.

MR. PARRISH: Thank you very much. We now move into special committee reports, Lynn Krieger. Website Technology -- Lynn has been appointed Chair for that committee. The website

is a very exciting project. I promised Bob Clyne it would be an operational website when he takes over in a year. And by golly, it's going to happen.

Lynn, would you just basically streamline and give us a status.

MS. KRIEGER: Thank you, Bob. I think everybody has already delivered my report for me: We're getting a new website. The process has been a long one, as we all know. We thank everybody for their thoughtful input in responding to our requests for what you want in a website, what you expect, and how you want it to work. We combined your feedback into a request for proposal that went out recently to about ten firms. We're expecting the proposals May 17th. We hope to get a draft of the website out at the Board of Director's meeting in August. Hopefully after the October meeting, the website will go online.

The Website and Technology Committee met on Wednesday at Jones, Hirsch, Connors & Bull, thanks to our new Vice-Chair, Bill Bell. Also in attendance was our Committee Secretary, Ken McGinis, Jamie Kleiner, Jack Vayda, Bob Clyne, and Bob Parrish. We discussed conceptual aspects of the website; details will follow as we develop the website with whichever firm is ultimately selected. Thank you everyone for contributing to our discussion about what the MLA would like to see in our new website.

We want to make sure the website is a tool to bring all the members together. I encourage all of you to go onto our committee site, look at the request for proposal, and give us any other recommendations you have as we work through this process. Our goals are to create a website that is responsive to all your needs, so I encourage you to give us your feedback.

That concludes my report. Thank you.

MR. PARRISH: Thank you, Lynn. We're all excited about the new website.

Skip Volkle, the In-House Counsel, followed by Mike Underhill, Government Counsel.

MR. VOLKLE: Thank you, Mr. President. The In-House Counsel Committee members met at Holland & Knight. Thanks to Vince Foley of Holland & Knight for their hospitality.

Since President Burrell started our committee, oh, just a few years ago, our first meeting, I think we had half a dozen people sitting around the room. We are now -- our latest meeting here, we had 22 attendees from every part of the marine industry, tug and barge, domestic and international liner services, lakers, ferries, tankers, P&I reps, so it's pretty much a cross section of the marine industry that participates in our committee.

We had a presentation by Tom Canevari from Freehill on the *Messier v. Bouchard* case.⁵ As In-house Counsel, this decision is petrifying. Coming from Seattle, it's kind of bizarre to see a circuit more out there than the Ninth Circuit, but I think the Second Circuit has taken the prize.

For those of you who don't know *Messier*, it modifies the manifestation rule for maintenance and cure. Historically the shipowner is liable for maintenance and cure for an underlying disease if it manifested while he was in the service of a vessel. The Second Circuit has thrown that rule out, ruling that if an illness is present during a seaman's service, even if there's no manifestation, the burden then shifts to the owner to establish that the condition preexisted employment and was not aggravated during employment.

Our concern, of course, is that it potentially makes shipowners health insurers for the lives of our seamen. The implications of this are broad from an insurance perspective and possible expansion of suits by shipowners against prior shipowners for indemnity and contribution and, in the wake of *Atlantic Sounding*, a particular concern over punitive damages.

⁵ *Messier v. Bouchard Transp.*, 688 F.3d 78, 2012 AMC 2370 (2d Cir. 2012).

We are gratified, in this case, that there is a conflict in the circuits, and the Second seems to be the only one taking this route. We hope that it stays the only one taking this route. Unfortunately, *certiorari* was denied by the Supreme Court, so in the Second Circuit, we are for now stuck with it.

We also had a presentation by Kurt Odell from Moran on the *Lozman* case, again from an In-House perspective -- and Frank talked earlier about the financing implications. From the In-House perspective, we're trying to figure out whether these things we have are vessels and how we insure them, whether it's hull and P&I, marine general liability. For those of us who provide harbor services to things, we don't know if it's a vessel against which we have a maritime lien or not a vessel, so *Lozman* is a mess.

We also had a presentation by Art Mead, my Co-Chair on the *One Beacon v Crowley* case. Very interesting case which upholds exculpatory clauses linked in electronic documents. So it's from a commercial standpoint, a very interesting case when you can put your exculpatory clauses in four point type, four clicks into your website, and it's still upheld by the courts. From a vessel owner's standpoint that may not be a bad thing.

Then we did a very brief regulatory update. We find ourselves in these meeting with a lot more to talk about than we ever have time for. But the International Chamber of Shipping has issued guidelines on the use of force to protect vessels from acts of piracy -- there are some real concerns with this International Chamber draft. It is much more restrictive, in my view at least, than U.S. law with respect to immunities and the actions of the shipowner. So we are closely monitoring that.

EPA has issued guidelines on demonstrating lack of PCBs and environmental compliance as a precondition for reflagging vessels in order to get MARAD approval. And in one sense, this is going to be fairly helpful because the prior process, you had to get MARAD approval, and they say you had to get EPA approval. And we asked the EPA what is the process to get approval, and they said we have no process. So that's, I think a positive development.

With that, that concludes my report.

MR. PARRISH: You got the Clyne extra 7 seconds. Thank you, Skip, very much for your work on that important committee. I will say this: I had not one, but seven requests in the last three days to be appointed to the In-House Counsel Committee. And I want to know what's going on in there. Very active committee. We thank all our in-house folks for doing it.

Mike Underhill, we now want to hear closing arguments in DEEPWATER HORIZON.

MR. UNDERHILL: Actually, I'll make it easy. I'll be short, and I'm going to cede all my extra minutes *nunc pro tunc* to Frank Nolan on the condition he shows me where I can get a private concert by the Drifters for only a buck in a subway station.

We finished Phase I of the -- well, it depends on your point of view whether you want to call it the BP case or the Gulf Oil Spill case. We finished Phase I two weeks ago, which is the liability portion of the trial, which is to establish or not, gross negligence and/or willful misconduct on the part of BP, the well owner, Transocean the owner of the rig, and Halliburton, the cement contractor. Other parties have gone by the wayside during trial, through motion practice have been dismissed.

The very brief statistics in what may be the biggest -- well, if we have our way, the biggest dollar case, maritime case in history. Defendants might see it the other way. We brought it to trial, all of us, the private plaintiff's, and the government. The states of Alabama and Louisiana are the only state parties that had filed suit by that time. And the parties -- the United States alone produced almost 100 million pages of electronic documents, plus probably about 20 million pages, give or take, from the defendants. That gives you an amount, the scope of work that was done to get to trial within three years, which, you know, those of us who have been doing maritime law for a long time, we've probably all had Jones Act cases that have taken longer than three years to get to trial with

five depositions. This one had 150 depositions with, I think, about almost 4,000 deposition exhibits that were marked as trial exhibits, in addition, 40 trial witnesses, 1,000 trial exhibits, that were actually entered at trial, about 500-600 demonstrative exhibits. It was a big trial, but Judge Barbier got us there within three years, finished within three years. We are set to produce findings of fact and legal briefing within about 50 days. If you see a little nervousness, it's because we have a big task. The trial was the fun part. Now comes the heavy lifting, the written part, which no one really enjoys, but does obviously matter.

So that's the summary of that part. I would only conclude by saying that in the future, we'll be able to report on future phases unless they settle out. Phase II is scheduled for mid-September, and that's the trial on quantification of how much oil came out of the hole. Because that's relevant to the United States' claims under the Clean Water Act, which is partly dependent on the amount of oil that was discharged. May be also relevant to the claims of the private parties as well. We'll probably, depending on -- we'll see how things go in the briefing -- have future reports on significant issues for all of you as to the standard of gross negligence and willful misconduct under the Clean Water Act, under OPA and likely under general maritime law to try to get at least within the Fifth Circuit -- well, certainly the Eastern District of Louisiana and possibly the Fifth Circuit as well -- definitions of those important concepts.

Already on appeal are some cases. Judge Barbier dismissed state law claims under common law and state penalties. That's already at the Fifth Circuit, along with similar claims of local parishes and sheriffs whose claims were also dismissed.

So the long and short of this, in future MLA meetings, we'll be able to report on not just the nuances of this particular case but likely other issues of law that are important to all of us, punitive damages and all kinds of things like that.

With that, I conclude my report, hopefully under time.

MR. PARRISH: Thank you, Mike. Just for a moment, we're one big tent. We are very appreciative that you, lead counsel for the government in the largest maritime trial of my career, took the time after, I think, finishing last Friday to come here and give us that report. Now, get some sleep.

Mike Ryan, CLE, he's going to tell us about the program he has this afternoon, followed by Liz Burrell, to talk about BIMCO. Then the last committee report will be Jim Bartlett, ABA liaison.

MR. RYAN: Thank you, Mr. President. Is this on? Ladies and gentlemen, members, guests.

The MLA is an accredited provider for CLE credits. This afternoon, as Bob mentioned, we have a program which appears to be or may be becoming an annual event, two hours on ethics and professionalism. I would like to acknowledge and thank Allianz Insurance for the use of their training room and JAMS for contributing to the program. I expect and hope that it will be well received. We have over 65 people listed as attendees.

Further, deponent sayeth not.

MR. PARRISH: Thank you, sir. Liz Burrell please.

MS. BURRELL: I'll have you know, that I started out reporting to this Association as the Uniformity Committee when the Committees reported in alphabetical order and, therefore, was always last in the program. Now that I'm at the head of the alphabetical list, the order of the reports has reversed. Is that a coincidence? I don't think so.

Be that as it may, I am here to remind you, that BIMCO is involved in the drafting of every kind of contract you can imagine as well as the revision of existing contract forms. I urge all of you, especially you committee chairs, to think about whether forms are adequately serving clients and the rest of the industry and whether or not there's a need for amendment. Take a look at the forms on the BIMCO website. Think about the ones you use, and let me know if

you think there is a need for a different kind of form, or if revisions are necessary to existing forms.

You have an opportunity to make something work so please, please get in touch with me if you have any commentary on various forms of any nature, whether existing or needed.

Thanks very much.

MR. PARRISH: Thank you, Liz.

Jim Bartlett. Liz, I will comment; I've got the solution for the arbitrary committee reporting time. We have a new mission to the intra-agency department of the Coast Guard. Captain Bert is going to do a blind draw of meetings next year, committee order of reporting.

Jim Bartlett.

MR. BARTLETT: Thank you, Mr. President.

I had the honor of representing this Association twice since we last met -- at the ABA Annual Meeting in Chicago in August and at the Midyear Meeting in Dallas in February. You will be glad to know *Lozman* was not discussed in either of those meetings.

What was discussed and what was passed that will affect our practices was a revision of the Model Rules of Professional Conduct under something called the Commission on Ethics 20/20. They basically tweaked ethical rules to address technological developments, increased mobility of lawyers, and increasing globalization, including outsourcing. So I encourage you -- if those are areas you're dealing with in your practices, to look at the new rules that were promulgated.

I also want to make you aware, if you are going to attend the ABA Annual Meeting in San Francisco, or if any of your colleagues in your firm are, that the Admiralty and Maritime Law Committee of the Tort Trials and Insurance Practice Section of the ABA is co-

sponsoring a CLE program with the Aviation Law Committee of TIPS on Friday, August 9th, and the subject is NTSB investigations. I urge you to attend if you're going to be in San Francisco for that meeting.

With that, Mr. President, I conclude my report.

MR. PARRISH: Thank you, sir.

Donny Radcliff, would you come on up. We've talked about the -- yeah, Donny, come on up. We talked about the Puerto Rican meeting in 2013. Donny Radcliff is the Chair of that committee. Bill Graffam from IIDM, are you going to come show yourself as well?

We got one for everybody.

MR. RADCLIFF: Good afternoon. Is this working yet?

MR. PARRISH: Yes.

MR. RADCLIFF: I managed high school without a lasting nickname. And I don't think you have to grow up in Alabama to appreciate the significance of that. There are several reasons it could happen, but the most likely is the teenager was too dull for his friends to waste their ingenuity in devising a clever nickname, but normal enough to avoid the attention of other classmates who may tag him with one out of ridicule.

I tell you that just so you know how awkward I feel, so inappropriately dressed for this meeting. You would think I was on a tropical island, full of charm, on top of a hilltop at a luxurious resort with the Virgin Islands just above the distant horizon, enjoying a gentle Caribbean breeze, excited about a week with good friends and respected legal colleagues.

Bob has asked that Bill, who has been introduced, and Jim, who everybody knows as -- I'm sorry, I didn't even look. Bob has asked the three of us to announce the fall meeting both verbally and nonverbally.

We all know that we're headed to Puerto Rico during the week of October 28th. We will be staying at the El Conquistador Resort, which is 40 miles from the San Juan International Airport.

I did want to add to your knowledge of this meeting. First, it is a joint meeting with the IIDM, which Bob has mentioned. The concept was hatched between Bob and Bill. The two of them picked the hotel and picked the time for the meeting. After turning over details to the Planning Committee, which Jim is the Vice-Chair, both Bob and Bill have remained extremely active in planning the resort meeting. Half of our members on the committee are San Juan maritime attorneys representing both organizations. They are members of both the MLA and the IIDM.

The meeting will start -- registration is on Tuesday. Golf and Tennis will be Wednesday morning. Committee meetings Wednesday afternoon. On Thursday and Friday, we will have the two-day CLE seminar. It will focus exclusively on international issues, which are of great concern and interest to the members of both the IIDM and the MLA.

Notwithstanding, my little spiel about a tropical island, I do try to be careful about superlatives. You cannot have everything the greatest or the best. But when I say the El Conquistador is magnificent, that is a sincere remark. I know it's opinion and opinion only, but I will say on the first trip there, Bob used Bill's strong influence to get us an extra night, and on my second and last trip, my wife and I went three days early just to enjoy the hotel. It is really beautiful.

The hotel has its own private island, great for hiking, horseback riding, casual dining, and just lounging at the water's edge. It has an 18-hole championship golf course with a view of the Caribbean, I think, on 14 of the 18 holes. It has a 2.5 acre water park, which is conveniently and wisely located out of sight and out of hearing of the other three pools, but it will be great for children.

The meeting does take place during Halloween. I hope all with young children at home will plan ahead to bring the children. It is part of the Committee's obligation to make sure the children are well attended. We will celebrate Halloween, and it is a great place for young children.

We are planning, but we are not sure that we will have an evening in old San Juan. There are daily excursions for members and guests into old San Juan. There are daily excursions to the rainforest, which is a 20 minute drive, a great place to sightsee and to hike as well. There will be a lot to do.

Thanks, in part, to the negotiation skills of the two event planners and the economy, the advertised room rate for the meeting is \$169. When you check out all inclusive, and that is Wi-Fi in the rooms and the common areas -- not in the meeting area, but in the common areas -- when you check out, you will pay \$202.80. That is lower than any meeting I can check on that we've had as a resort meeting.

Also, I would recommend taking the hotel bus from the airport. Make reservations through the hotel. The bus is there right outside the baggage claim. I don't think you will want to leave the hotel, but if you have to leave the hotel, there is an Enterprise Rental Car agency there for that purpose.

The rates of airfare, I did a quick canvas of the rates in the major cities where we practice and live. There are several under \$300. And this is round trip for the period of our meeting in October, November. There are several under \$300, several under \$400, and most of the rest are under \$500. I don't know why it's cheaper now to fly to Puerto Rico than it is in the Continental U.S., but it is. It seems like Jet Blue and Southwest have the best deals. There not going to last, so get them.

To conclude, Bob has put together a resort meeting that is going to be very difficult for the future presidents to match. And please join us.

MR. PARRISH: Señor Graffam, dos minutos, por favor.

MR. GRAFFAM: I won't take that long. Thank you very much, Mr. President. I wanted to, first of all, say we're really excited about this meeting. It's going to be probably 5-, 600 people by the end of the day between both organizations. We have as sponsors, the CMI. We have several distinguished international speakers. And we just got confirmed that former Chief Judge of the First Circuit, still acting Judge of the First Circuit, in fact, the only Puerto Rican judge on the First Circuit, Judge Juan Torruella, will be our guest speaker. Those of you who have looked up cases within the First Circuit, he is by far the most prolific writer and the most knowledgeable judge in the First Circuit on maritime matters. He is a master mariner who has sailed around the world at least twice. At least it was twice the last time I talked to him. And he is a judge of the Olympic sailing events. So we probably have one of the most distinguished speakers in our area, who is going to be our guest speaker there.

As I said before, we have several international speakers from CMI, IMO, and we're really, really excited. We'll see y'all in October in Puerto Rico.

MR. PARRISH: Thank you very much.

We have four more very important, but very relevant brief matters. If you'll just bear with me, I think we'll be out of here fairly soon.

Boriana Farrar, the Chairman of the New York Dinner Committee, who oversees us getting to the right table, sometimes with success.

MS. FARRAR: Mr. President, officers, directors, distinguished guests, fellow members.

The MLA dinner will take place tonight at six o'clock at Cipriani's, located at 55 Wall Street. It's a spectacular venue. The cocktail reception is going to be from six until seven. Please make note the bars upstairs will open first. So if you arrive early, go

upstairs. The dinner itself will be from seven to eleven, but you can stay later, talk to your friends, and enjoy the dinner.

Something important: If you would like to have fish, place your order after the first course. Tell your waiter you would like to have fish. Cipriani's requests that we announce that.

We are all looking forward to seeing you there. This year we're going to have a band called Code Blue. So after the dinner, if you want to dance, you can dance. And since all of the bars will be open all night, I think some people will dance.

And I would like to use this opportunity, because this year I am stepping off as the Chair, to thank, Mr. Parrish, Mr. Clyne, Mr. Connor, and Mr. Bonner, who used to say I'm the most important woman in their life. I would like to thank my Dinner Committee because we would never have been able to have such successful dinners without them. And I would like to thank my firm, Hill, Betts & Nash, and Gregory O'Neill for the support throughout the years, allowing me to do what I did.

Thank you. And I'm looking forward to seeing you.

MR. PARRISH: Hold on if you would for a second. You have no idea how hard this job is. You have no idea how many issues arise without describing what they are. But Borianna has been essential in handling those.

Borianna, if you would turn, I have your Certificate of Service. And I just want to remark that I understand the Nominating Committee is going to turn in a report which will prove that no good deed goes unpunished.

MS. FARRAR: Thank you very much.

(Applause.)

MR. PARRISH: I would ask if Board Members Minichello, Muzyka, Nolan, and Nowell would come up for me for a second. They didn't know I was going to do this to them.

The life of the President is a daily love, and part of it is I get to know all of you. I saw a question yesterday: How many people do you know by name? Notwithstanding my short-term memory loss, sometimes long-term memory loss, I think it's upwards of 70, 80 percent, maybe higher, in 35 years of working with all of you women and men from the MLA. But these four rascals are the outgoing members of the Board of Directors.

Those of you who haven't been in leadership, despite embarrassing ourselves, the Board -- the MLA functions through the Board. Neither I nor any of the officers make policy. The Board makes that policy. And I try to seriously funnel everything through the Board if for no other reason than because I have Frank Nolan to take the blame for everything if I mess up. But these guys are the senior class. We'll elect four new ones very shortly, but these are the outgoing guys.

I just want to say publicly Dennis Minichello, Frank Nolan, Tom Muzyka, and George Nowell how much I appreciate what you've done in helping me and helping the Association. Thank you very much.

(Applause.)

MR. PARRISH: Thank you. Next I believe we have a report from the happiest man in the MLA, Immediate Past President Pat Bonner.

MR. BONNER: Good afternoon. The Nominating Committee met on Wednesday and we proposed the following slate: For President, Robert Parrish of Jacksonville; for First Vice President, Robert Clyne -- there was some controversy here. We didn't know whether to say Houston or New York so we decided to split the difference -- Robert Clyne of Tennessee; Second Vice President, Harold Watson of Houston; for Secretary, Dave Farrell of Cape Cod; for Treasurer, William Connor of New York; for Membership Secretary, Barbara Holland of Seattle; for Board of Directors for a three-year term, Christopher Carey of New Orleans,

John Farmer of St. Louis; Boriana Farrar of New York, Lynn Krieger of San Francisco.

Mr. President that concludes my report. And I call upon the senior Past President Chet Hooper to make a motion.

MR. HOOPER: I move that the Secretary be directed to cast one vote for the nominees.

MR. PARRISH: Is there a second?

MEMBERS: Second.

MR. PARRISH: All in favor?

MEMBERS: Aye.

MR. PARRISH: Opposed?

Thank you, Mr. Past President.

MR. HOOPER: Should I do the next thing?

MR. PARRISH: We'll keep you here for a second. We actually clipped about 45 minutes off the last time, so I'm happy with that, but not quite done yet.

I just want to congratulate the new Board members and tell you look for your first e-mail in about ten minutes.

Mr. Past -- Senior Past President, Mr. Hooper, do you have a motion?

MR. HOOPER: I have a motion. Before that, earlier this week I was reminded of a trip that John Kimball sent me on to London years ago to testify before some arbitrators, and the Chair of the panel was Sir Christopher Staughton, who is one of the past Healy Lecturers, retired Lord Justice of Appeal.

During my testimony, I referred to the case *Cohen v. Beneficial Finance*. Is that Michael Marks Cohen? I assured him that it was not. I didn't think he was the plaintiff. But he said would you please tell him that I asked.

And with that, I move that we adjourn.

MR. PARRISH: All in favor? Good bye.

(The meeting concluded at 12:31 p.m.)

**Resolution Concerning a Proposed Change to
Rule 82 of the Federal Rules of Civil Procedure**

WHEREAS, Public Law 112063, Title II, § 205 (Dec. 7, 2011) amended Chapter 87 of Title 28 of the United States Code by adding 28 U.S.C. § 1390(b) and repealing 28 U.S.C § 1392; and

WHEREAS, Rule 82 of the Federal Rules of Civil Procedure currently provides:

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is not a civil action for the purposes of 28 U.S.C. §§ 1391-1392; and

WHEREAS, the statutory change makes necessary a Revision to Rule 82 to reflect, *inter alia*, the repeal of 28 U.S.C § 1392,

NOW, THEREFORE, BE IT RESOLVED that, to conform to changes to the venue provisions of Chapter 87 of 28 U.S.C., specifically, the adoption of 28 U.S.C. § 1390(b) and the repeal of 28 U.S.C. § 1392, The Maritime Law Association of the United States recommends that Rule 82 of the Federal Rules of Civil Procedure be amended to read:

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is not a civil action for purposes of 28 U.S.C. §§ 1390-1391.

Report of the International Organizations, Conventions, and Standards Committee

The general meeting of the International Organizations, Conventions & Standards Committee was held on Thursday, May 2, 2013 from 9:00 to 11:00 a.m. at the offices of Holland & Knight, 31 W. 52nd Street, Room 12A, New York, NY. Approximately forty persons were in attendance, including several by telephone. A list of the attendees is maintained in the records of the Committee.

A number of special and invited guests were in attendance at this meeting. They included Mr. Stuart Hetherington, President of the Comité Maritime International, Mr. Soren Larsen, Deputy Secretary General of BIMCO, Ms. Helen Noble, President of the Irish Maritime Law Association, Mr. Deiter Schwampe, President of the German Maritime Law Association, Dr. Hassania Cherkaoui, President of the Maritime and Aviation Association of Morocco, Capt. Melissa Burt, Chief of the Office of Maritime and International Law of the United States Coast Guard, and Lieutenant Brendan Sullivan of the Coast Guard Office of Maritime and International Law.

Mr. John Kimball, Chair of the CMI Subcommittee, provided a short overview of recent activities at CMI, including a follow-up to the Beijing meeting. He then introduced Mr. Stuart Hetherington, President of CMI, to provide a detailed report.

Mr. Hetherington presented to the Committee a very thorough report on CMI activities, discussing a number of important developments. He advised that work continues on the unfinished Convention on Judicial Sale of Vessels, which will be addressed again at the Dublin meeting, as the 1994 rules changes contain a number of inadequacies. A complete review will take place at the 2016 conference as they ran out of time in Beijing. The draft Convention seeks to bring uniformity, an issue between civil and common law. CMI plans a complete review of the York-Antwerp Rules for potential amendment as well.

Mr. Hetherington reported that CMI's Standing Committee on Maritime Conventions continues to make efforts to promote a number of IMO conventions, including those on passenger liability, cross-border insolvency, limitation of liability, and the ongoing efforts to obtain further national ratifications of the Rotterdam Rules. They are working with the IMO Legal Committee and the International Chamber of Commerce in these efforts.

Mr. Hetherington discussed the increased use of the seas in Arctic and Antarctic regions and efforts to develop a code of conduct for these regions. He briefed the Committee on continuing work to develop a regime for fair treatment of seafarers and he reported on CMI's work and efforts to curtail piracy and maritime violence. Mr. Hetherington concluded with a discussion about CMI's efforts to encourage participation by young lawyers which are the future of the organization, and also updates to the CMI website and handbook listing of conventions.

Entering a discussion of future plans for the CMI, Helen Noble, President of the Irish MLA, was introduced and informed the Committee about the upcoming meeting to be held in Dublin in the Fall. This conference will be held from 29 September to 1 October 2013 and is expected to be an enjoyable and informative event.

Mr. Vince Foley, Vice-Chairman of the IOCS Committee, reported on preliminary plans for the joint CMI/MLAUS meeting to be held in New York in the Spring of 2016. This will be a five-day conference with a gala dinner and one day tour. Work continues on developing the program.

The Committee next heard from Mr. Soren Larsen, Deputy Secretary General of BIMCO. Mr. Larsen gave a detailed presentation on the emergence of Singapore as a venue for arbitration and an alternative forum under the BIMCO forum clause, used in 75% of maritime contracts. He reported that due to the ever increasing influence of Asian shipowners Singapore is more in demand as an alternative to the traditional arbitration forums of New York

and London. He reported that Hong Kong and Shanghai are also vying for this status and are looked upon favorably by some Asian shipowners, particularly Chinese who represent a large proportion of the tonnage.

Singapore's legal system is based upon the English law system and harmonizes well with BIMCO contracts. The Singapore government is also driving efforts to bring forums, particularly the NYPE General Time Charter Party form, into conformity with commercial and legal developments. He expects that Singapore may publish their shorter time charter party form soon. Singapore would like their short form to serve as the default. BIMCO is perceived as a bit Eurocentric but he believes that if BIMCO approves all arbitration clauses it may help to change this perception. Mr. Larsen recommended that interested persons review the BIMCO website and links therein to arbitration sites for further explanation.

With regard to the Rotterdam Rules, Mr. Larsen noted that the Danish Government is working to bring this into Danish law. He is not sure if the Danish Government is waiting for U.S. action on the Rotterdam Rules. He also reported little progress in Japan. It appears that other nations are looking to the U.S. to take the lead in ratification.

The Committee next heard a report from Capt. Melissa Bert, Chief of the Office of Maritime and International Law of the U.S. Coast Guard. Capt. Bert provided an update and highly interesting summation of the status of the new vessel emission control areas and EPA vessel general permits.

Capt. Bert also addressed the latest developments with ballast water regulation. She discussed involvement with the development of the maritime labor convention. Finally, Capt. Bert also addressed the U.S. Coast Guard's response to increased Arctic traffic, a presentation which dovetailed with the CMI's work on a code of conduct for the Arctic region. It was clear that the Arctic is becoming the focus of many efforts to regulate waters that are for the first time becoming accessible for vessel traffic and resource exploitation.

Mr. Doug Burnett, Chair of the International Law of the Seas Subcommittee, gave an update on the Law of the Sea Convention, advising that it remains stalled in Congress with no immediate prospect of ratification. Earlier hopes that the Convention would finally move through the Senate for approval in the last year proved rather surprisingly unfulfilled.

Finally, Ms. Boriana Farrar, Secretary of the IOCS Committee, gave a brief presentation on the exemptions for certain cargoes under the International Maritime Solid Bulk Cargo Code.

The IOCS Committee plans to meet during the MLA's fall conference in San Juan, Puerto Rico. We hope that the IOCS meeting will be joined by a number of members of the Ibero-American Institute of Maritime Law, and also perhaps work as a joint meeting with another MLAUS committee. The IOCS officers are now working on plans for this fall meeting and welcome suggestions and participation from the Committee members.

The IOCS Committee also continues to encourage participation by young lawyers and there are a number of potential projects for which their help will be appreciated. The IOCS Committee recognizes that the young lawyers are the future of this organization and we look forward to their attendance and participation.

Respectfully submitted,

Phillip A. Buhler, Chair

**Joint Report of the Regulation of Vessel Operations, Safety,
Security, and Navigation Committee and the Marine Ecology
and Maritime Criminal Law Committee**

The Committee on Regulation of Vessel Operations, Safety, Security, and Navigation held two meetings as part of the Maritime Law Association's Spring 2013 calendar. The first was held on April 30, 2013 at the offices of Winston & Strawn in Washington, D.C. The second was held on May 2, 2013 at the offices of Holland & Knight in New York. On each occasion the meeting was held jointly with the Committee on Marine Ecology and Maritime Criminal Law and the Committee of Government Counsel. The chairpersons of those committees, Katharine Newman and Mike Underhill, as well as the host firms, are to be thanked for their assistance in coordinating and staging the meetings.

At both Washington and New York we heard presentations from important representatives of the U.S. Coast Guard. In Washington, Staff Counsel Jennifer Mehaffey and Mr. Dana A. Goward, Chief of the Coast Guard's Office of Marine Transportation Systems, made presentations. In New York, Captain Melissa Bert, Chief of the Coast Guard's Office of Maritime and International Law, attended and made a presentation. At the Washington meeting we were pleased to welcome as an attendee Rear Admiral Fred Kenney, the Coast Guard's General Counsel and Judge Advocate General. Thanks go to Lieutenant Brendan Sullivan, Staff Attorney in Captain Bert's office, who played an important role in arranging the attendance of all Coast Guard presenters.

Ms. Mehaffey and Captain Bert each discussed the Coast Guard's ballast water management regulatory regime which went into effect in 2012. The primary point made by each was the potential conflict between those regulations and the U.S. Environmental Protection Agency's Vessel General Permit ("VGP"), which will come into effect in August 2013. The VGP imposes certain requirements for transfer and disposal which the Coast Guard regulations do not. It will be important for vessel operators to seek out the approval of both the Coast Guard and the EPA for the equipment that they have on board.

Ms. Mehaffey also discussed the status of the TWIC Reader program by which the Coast Guard has made determinations as to which vessels and waterfront terminals need to install electronic reader devices and which do not. A Notice of Proposed Rulemaking (“NPRM”) is out which sets out their classification decisions.

Mr. Goward’s office in the Coast Guard has responsibility for numerous programs by which the Coast Guard maintains and modifies the navigation systems throughout the country, including systems of lighthouses and buoys, port access ways, navigation obstructions, and the like. He discussed several issues pertaining to the National Ocean Policy, regional planning considerations, marine event permitting, and the Navigation Safety Advisory Council. One of the more fascinating topics had to do with the ongoing planning and permitting process for the various wind farm projects that are on the drawing board for the U.S. Atlantic Coast. Mr. Goward’s office performed a study of vessel transit patterns based upon the data from the AIS system which revealed numerous conflicts between wind farm projects planned off of Maryland and New Jersey. Despite the reports in the popular press, the wind farm projects are very far from receiving final regulatory approval. As a result, the federal tax credits to encourage “green energy” which are set to expire this year, will absolutely need to be extended.

In conjunction with Mr. Goward’s discussion of the Navigation Safety Advisory Council, Jeff Moller made mention of the fact that he had been appointed as the MLA’s designated NAVSAC member. The membership of the NAVSAC is very diverse and includes all manner of potential stakeholders, from the largest liner operators to the smallest fishing boat charter operators, from harbor pilots to yacht captains. The projects on NAVSAC’s plate primarily pertain to potential amendments to the several sets of collision avoidance rules (Inland Rules, COLREGS, Rules for Western Rivers). At the most recent meeting held in Arlington, VA in April, for example, NAVSAC considered potential revisions to the COLREGS to accommodate the peculiarities of unmanned autonomous vessels, *i.e.*, waterborne drones.

Joseph Cox, the Executive Director of the U.S. Chamber of Shipping, gave the Washington meeting a historical and practical review of the Maritime Labor Convention of 2006 which had been promulgated by the ILO. Mr. Cox mentioned that the International Labor Organization is the last working vestige of Woodrow Wilson's League of Nations. The Convention, which will soon come into effect in the ratifying countries, is concerned with problems associated with seafarer welfare and working conditions. The Convention has not yet been ratified by the U.S. Senate, and given the current congressional climate, ratification is unlikely in the near term. Mr. Cox nevertheless requested the meeting attendees to push their elected representatives for ratification because U.S. flag vessel operators will face difficult compliance problems when they visit countries that have ratified the convention unless they have some form of proof from the Coast Guard that they are in compliance.

At both the New York and Washington meetings Larry Kiern, Vice Chairman of the Regulation of Vessel Operations Committee, gave an energetic and illuminating speech on recent legislative updates and his forecast for the current Congressional session. He mentioned that the offshore wind tax credit had been extended and modified so that projects would not need to be completed but need only be commenced during the course of 2013. He also mentioned the Defense Authorization Act of 2012 which extended the maritime security program for another 13 years. He also mentioned various aspects of the Coast Guard Authorization Bill of 2012, including the modification to the Deep Water Ports Act, which anticipates for the first time that natural gas and petroleum products will be exported from rather than merely imported to the United States. By way of forecast, Larry discussed the fact that the effects of the ongoing "sequestration" have turned Congress and the administration into a battleground for transfer of funds from one program to another. This is likely to be destructive of the Coast Guard's efforts to run its programs, let alone add to or replace the complement of vessels so necessary to its operations.

Greg Linsin, Vice-Chair of the Marine Ecology and Maritime Criminal Law Committee and former Chief of the Environmental

Crimes section of the U.S. Department of Justice, discussed three recent court cases pertaining to MARPOL violations. Katharine Newman delivered Greg's presentation at the meeting in New York.

Both Mike Underhill and Jessica McClellan gave presentations with respect to the recently-concluded Phase I trial of the DEEPWATER HORIZON case. Jessica spoke in Washington, Mike in New York. The sole focus of Phase I was the issue of whether or not the defendants were guilty of gross negligence with respect to the spill. The bench trial before Judge Barbier in New Orleans lasted eight weeks, involved numerous fact and expert witnesses and thousands of exhibits. Mike and Jessica both marveled at the job of management that Judge Barbier and, to an even greater extent, the magistrate judge did in coordinating all of the pre-trial activities so that a liability trial could take place less than three years from the date of the explosion.

Jon Waldron, a member of the Regulation of Vessel Operations Committee gave an enlightening talk in Washington with respect to the current regulatory playing field in the offshore space in the post-DEEPWATER HORIZON era. Jon dealt specifically with the application of the coastwise trade restrictions as they apply to offshore activities and the Commerce Department's enforcement activities.

At the New York meeting, Captain Melissa Bert covered numerous topics. In addition to the ballast water management regulations and the TWIC Reader NPRM, she also covered the Maritime Labor Convention, the Crimes at Sea Convention, the latest developments in the law of piracy and a number of issues pertaining to regulations in the increasingly navigable Arctic Ocean. She noted that at IMO, a voluntary template was promulgated which requires a vessel's master to gather and protect a certain minimal amount of evidence of crimes which take place on board his/her vessel. With respect to piracy, she mentioned that there is unlikely to be an international convention on piracy so the domestic laws of the various maritime nations are going to remain the bases of prosecutions going forward. The piracy law in the U.S. is a simple one-sentence statute which needs to be revised and updated. As for

the situation in the Arctic, global climate change has made navigation much more possible such that there has been a lot more cruise ship activity, a lot more drilling for resources, and vessel transits are now occurring through the Arctic Ocean as a “great circle route” back and forth between Russia and Europe. This has complicated the efforts of the various bordering countries to respond to pollution incidents and conduct search and rescue operations. Finally, Captain Bert noted that the Coast Guard was satisfied with the Supreme Court’s decision in the Lozman case and its “reasonable observer” test.

Luke Reid of the Chalos O’Connor firm gave an enlightening presentation to the New York meeting with respect to the new MARPOL Annex IX air pollution regulations and the potential criminal and civil sanctions for their violation. The Emissions Control Area (“ECA”) for North America went into force in 2012 which requires vessels to burn only low sulfur fuel within it, but the challenge of shifting from one fuel to another and, moreover, keeping accurate records with respect to the transfer will inevitably lead to “magic fuel” cases.

Finally, LeRoy Lambert, President of Charles Taylor (Americas), gave some remarks in New York with respect to the latest issues facing P&I Clubs which included coverage for many of the activities which had been discussed during the course of the meetings, including transits and exploration in the Arctic, offshore pollution response involving dispersants, and similar topics.

The meeting in Washington was attended by 45 members and guests whereas the meeting in New York was attended by 66 members and guests.

Respectfully submitted,

Jeffrey S. Moller, Chair
Regulation of Vessel Operations,
Safety, Security, and Navigation
Committee

Katharine F. Newman, Chair
Marine Ecology and Maritime
Criminal Law Committee

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

Held at Chaffe McCall, L.L.P.
New Orleans, Louisiana
on
Tuesday, March 12, 2013
at
9:30 a.m. CST

The March 12, 2013, meeting was called to order by President Robert B. Parrish at 9:30 a.m. CST. In addition to President Parrish, the following officers were also present:

Robert G. Clyne, First Vice President
Harold K. Watson, Second Vice President
David J. Farrell, Jr., Secretary
William Robert Connor, III, Treasurer
Barbara L. Holland, Membership Secretary

The following directors were present:

Patrick J. Bonner, Immediate Past President

Dennis Minichello	Edward J. Powers
Thomas J. Muzyka	Charles B. Anderson
Francis X. Nolan, III	Michael K. Bell
George W. Nowell	Katharine F. Newman
Susan M. Dorgan	(by telephone)
Robert B. Fisher, Jr.	Joseph A. Walsh, II
Alexander M. Giles	

Past President Howard M. McCormack, Past President Lizabeth L. Burrell, and Donald C. Radcliff also attended at the invitation of President Parrish.

President Parrish opened the meeting by recognizing the good work of Mr. Fisher for the MLA over the years and for his founding role in the *Tulane Maritime Law Journal*.

SECRETARY'S REPORT

On motion duly made and seconded, the Board approved the minutes from the November 8, 2012, meeting of the Board of Directors, which was held by telephone conference because the Board had cancelled the New York City Fall 2012 meeting in the aftermath of Superstorm Sandy.

Mr. Farrell reported that the next editions of *The MLA Report* and the *MLA Proceedings* are just about finalized and will be mailed together to the membership soon, for delivery prior to the New York Spring 2013, meeting.

TREASURER'S REPORT

Mr. Connor reported that the MLA's finances continue in good shape. On motion duly made and seconded, the Treasurer's Report for the three months ending October 31, 2012, and the two months ending December 31, 2012, were approved.

Mr. Connor highlighted that because we changed to a calendar year starting January 1, 2013, the final 2012 period ended December 31, for a period of only two months. Accordingly, our 2012 audit and tax return will reflect a shortened fiscal year of May 1 thru December 31, 2012, but going forward easier accounting comparisons based on calendar years will be possible.

Regarding dues payments, Mr. Connor anticipated that forty-four members delinquent for three years would be automatically terminated from membership in accordance with By-Law 213.2. He is continuing to monitor the impact of revenue loss due to the increasing number of Life members.

Mr. Connor also updated the Board on financial arrangements with Cipriani Wall Street and applying funds we had paid for the cancelled Fall 2012, dinner dance toward the Spring 2013, dinner.

MEMBERSHIP SECRETARY'S REPORT

Ms. Holland reported that two judges had been proposed for Judicial membership:

Judge Michael Davis of Minneapolis, MN

Judge W. Michel Pierson of Baltimore, MD

Ms. Holland also recommended one applicant for Proctor membership:

USCG Rear Admiral Charles D. Michel of Key West, FL

Ms. Holland reported that twelve applicants have applied for Associate Lawyer membership:

Bruce P. Bennett of Brookfield, CT

Norman Choi of Jersey City, NJ

Ian Doris of Rutherford, NJ

Michael P. Freije of Alexandria, VA

Carrol Hand of Reston, VA

Steven F. Hill of Vancouver WA (Reinstatement)

Bella Pevzner of New York, NY

Mary Welsh McBurney of Providence, RI

Gabriel W. Scott of Cordova, AK

Imran O. Shaukat of Baltimore, MD

Margaret “Ellen” Shults of Jacksonville, NC

Nathaniel Spencer of Portsmouth, RI

On motion duly made and seconded, the Board approved the above applications.

The following six law students have become Law Student members since our November 2012, meeting:

Laura Beck, Tulane Law School

Adron Beene, University of San Diego

Andrew Carter, George Washington University

Adam Deitz, Roger Williams University School of Law

Darren Newhart, St. Thomas Law School

Zoe Sajor, Boston University School of Law

Ms. Holland regretfully reported learning of the following deaths since our November 2012, meeting:

Lloyd L. Anderson of Hampton Bay, NY
Life Member: elected 1966

Hon. Robert R. Beezer of Seattle, WA
Judicial Member: elected 1985

William J. Coffey of Newport, RI
Life Member: elected 1970

Michael Marks Cohen of New York, NY
Life Member: elected 1970; Executive Committee 1984 – 1987;
Titulary Member of the CMI

Hon. James M. Fitzgerald of Anchorage, AK
Judicial Member: elected 1988

George W. Healy, III of New Orleans, LA
 Life Member: elected 1955; Executive Committee 1984 – 1987;
 Board of Directors 1993 – 1996; Past President 1992 – 1994;
 Titulary Member of the CMI

Donald A. Hoffman of New Orleans, LA
 Proctor Member: elected 1975

Charles F. Lozes of New Orleans, LA
 Proctor Member: elected 1975

Hon. James C. Paine of West Palm Beach, FL
 Judicial member: elected 1985

A. Lauriston Parks of North Kingstown, RI
 Life Member: elected 1965

Thomas W. Thorne, Jr. of New Orleans, LA
 Life Member: elected 1958

James F. Young of Philadelphia, PA
 Life Member: elected 1956; Executive Committee 1976 - 1979

With the above membership changes, the MLA's total membership now stands at 2,846 and is comprised as follows:

VOTING MEMBERS

Proctors	1309
Associates	1165
Non-Lawyers	174
Academic	26

NON-VOTING MEMBERS

Ex-Officio	15
Honorary	5
Judicial	120
Law Students	32

Ms. Holland also reported on a joint meeting held between the MLA Officers and the Board of the Maritime Administrative Bar Association and a reception with its members afterwards in conjunction with the MLA Officers' January 28, 2013, meeting in Washington, DC. This was considered a valuable exchange and potential for recruiting MLA members. A repeat will be considered for January 2014.

SECOND VICE PRESIDENT'S REPORT

Mr. Watson reported on his efforts coordinating the New York Spring 2013, committee meeting schedule, generally concentrating meetings downtown on Wednesday, May 1, and mid-town on Thursday, May 2.

The Board discussed with some concern the inability, for the time being, of identifying a new Chair of the Committee on Uniformity of U.S. Law.

Regarding copywriting the MLA logo, Mr. Watson reported it is necessary to research when the logo was first used and he would be contacting some of the MLA's elders in that effort.

BOARD SUBCOMMITTEE REPORTS

Reprinting of MLA Publications

Ms. Dorgan reported on continuing efforts to prepare guidelines for reprinting copyrighted MLA publications. The subcommittee (also including Messrs. Fisher, Giles, and Powers) anticipated formulating a proposal for the Board's consideration at the May 2013, Board meeting.

Membership Questionnaire

Mr. Minichello reported that the membership questionnaire he and Messrs. Muzyka, Nolan, and Nowell were preparing will be sent to the membership before the Spring 2013, meeting. President Parrish noted he would address the questionnaire at the General Meeting of the Association on May 3, 2013.

OTHER REPORTS

Lozman v. City of Riviera Beach

Mr. Nolan, who drafted the MLA amicus brief and attended the October 1, 2012, oral argument in the United States Supreme Court, reported on its January 15, 2013, opinion holding that a reasonable observer standard rather than the owner's subjective intent determines whether a floating structure is a vessel as defined by 1 U.S.C. § 3. The *Lozman* opinion will be further assessed by the Committee on Marine Financing.

Marshall Islands and Liberian Registries

Mr. Nolan also reported that the Marshall Islands Registry recently implemented the MLA's lease financing proposal conferring a preferred mortgage lien on a security interest in a bareboat charter party which in economic reality constitutes the sale of a vessel. The Liberian Registry is expected to follow and it is possible the United States Congress may consider adopting this mechanism too.

President Parrish thanked Mr. Nolan for his excellent job in raising the MLA's profile in marine financing circles as well as his work on *Lozman* and his efforts at the recent CMI meeting in Beijing.

BIMCO

Past President Burrell reported on her continued monitoring of apparent BIMCO efforts to eliminate New York as an arbitration venue on BIMCO form contracts.

Federal Judicial Education

The Board reviewed a memo and report from Mr. Walsh, Ms. Holland, and Mr. Nowell on further plans on developing an admiralty and maritime law education program for Ninth Circuit judges and possibly the Federal Judicial Center. The Board fully supported these efforts as an excellent use of MLA resources.

DISCUSSION ITEMS

Judge John R. Brown Admiralty Moot Court Competition

The Board gave approval to continuing the MLA's practice of contributing \$2,500 annually to the Judge John R. Brown Admiralty Moot Court Competition, which student teams from many law schools across the United States enter, and to which many MLA members volunteer their time as brief and oral argument judges.

A general discussion followed, with the Board not otherwise inclined to make monetary contributions to individual law schools or fund raising efforts.

MLA Website Project

President Parrish reported the MLA is moving ahead at an acceptable pace in updating our website. He recently received a highly technical, detailed report from our outside consultant, Spencer Sahim, and forwarded it to a group of Past Presidents and the Website and Technology Committee Chair Marc G. Marling and Vice-Chair Lynn L. Krieger. The later reviewed the consultant's report and distilled it in a summary memo to President Parrish which he distributed to the Board, and made the consultant's full technical report available upon request.

With Ms. Krieger in the air in transit to New Orleans, Mr. Marling reported by telephone to the Board several observations. They believe it feasible to thoroughly modernize and re-design our website, making it compatible with a wide variety of browsers, iPads, and smart phones, while also saving our extensive MLA database by converting current documents to PDFs. Also, secure and redundant storage of our database can be achieved inexpensively by moving it to the cloud.

The Board approved continuing ahead with the website project generally as outlined above.

CMI 2016 Conference in New York

Mr. Clyne summarized that the MLA had invited the Comité Maritime International (“CMI”) to hold its 2016 meeting in New York City in conjunction with the MLA spring meeting and that Vincent J. Foley had been appointed as the MLA’s chair for that CMI meeting.

President Parrish reported that although in the early planning stage, a number of problems have surfaced in light of a long list of guidelines recently provided by the CMI. Of primary concern, according to the CMI guidelines, the local sponsor of CMI meetings (i.e., the MLA) is required to fund all advance payments. Making this more inequitable, the CMI expects to collect 50% of the meeting’s profits, which may be quite substantial, but without taking any of the advance risk. Among the advances the MLA would be expected to front include those for a professional conference organizer, hotel accommodations and meeting rooms, other venues, caterers, excursions, etc. While past CMI meetings held in other countries may suggest sponsorships can help defray some of this risk, it is not viewed as very likely that our domestic maritime industry will provide substantial financial support.

Mr. Connor noted that advances could exceed \$1 million, which is not feasible for the MLA given our finances. Compounding problems, advances for reservations would need to be made in the near future while any reimbursements would likely not start until CMI conference sign ups in January 2016, thus exposing advanced funds over a long period. Indeed, there were doubts expressed that MLA members would be interested in paying an anticipated \$1,000 CMI attendance fee.

While not taking any formal action at this point, the Board was comfortable that Mr. Connor and Mr. Clyne (with their experience as MLA Treasurers) along with Charles E. Schmidt (with his experience as Chair of the Meetings and Events Committee) would closely scrutinize financial issues related to planning the CMI meeting.

MLA Local Events

President Parrish again encouraged the Directors to host an informal event for members at the local level as an excellent way of engendering MLA collegiality.

PUERTO RICO FALL 2013 MEETING

Mr. Radcliff reported on plans for the Fall 2013, resort meeting in Fajardo, Puerto Rico, October 30 to November 2, 2013. Efforts to collaborate a joint meeting with the Instituto Iberoamericano de Derecho Maritimo (“IIDM”) have been proceeding very well. A brochure of the El Conquistador resort was circulated for the Board’s review and a tentative schedule of events was discussed. The Board was pleased that an excellent program is shaping up.

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

Respectfully submitted,

David J. Farrell, Jr.
Secretary

**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
New York, New York

on

Thursday May 2, 2013
9:30 A.M.

The May 2, 2013, meeting was called to order by President Robert B. Parrish at 9:30 A.M. The following officers were also present:

Robert G. Clyne, First Vice President
Harold K. Watson, Second Vice President
David J. Farrell, Jr., Secretary
William Robert Connor, III, Treasurer
Barbara L. Holland, Membership Secretary

The following directors were present:

Patrick J. Bonner, Immediate Past President
Dennis Minichello Alexander M. Giles
Thomas J. Muzyka Edward J. Powers
Francis X. Nolan, III Charles B. Anderson
George W. Nowell Michael K. Bell
Susan M. Dorgan Katharine F. Newman
Robert B. Fisher, Jr. Joseph A. Walsh, II

Past Presidents Chester D. Hooper and Lizabeth L. Burrell also attended at the invitation of President Parrish as did Christopher O. Davis, Vincent J. Foley, Lynn L. Krieger, and Donald C. Radcliff.

SECRETARY'S REPORT

On motion duly made and seconded, the Board approved the minutes from the March 12, 2013, meeting of the Board of Directors held in New Orleans.

TREASURER'S REPORT

Mr. Connor reported that the MLA's finances continue in good shape. On motion duly made and seconded, the Treasurer's Report for the three months ending March 31, 2013, were approved.

On Mr. Connor's recommendation, the Board also approved moving MLA funds held in an almost zero interest mutual fund to a Citibank FDIC money market interest bearing account. In addition, the Board approved payment of a \$5,000 bonus to MLA Administrator Robin Becker for her loyal, hard work.

MEMBERSHIP SECRETARY'S REPORT

Ms. Holland reported that two judges had been proposed for Judicial membership:

Hon. M. Margaret McKeown
Ninth Circuit Court of Appeals

Hon. Nelva Gonzales Ramos
Southern District of Texas

Ms. Holland reported that the following sixteen Associate members have been recommended for Proctor status by the Committee on Proctor Admissions:

Alanson T. Chenault, New Orleans, LA

Carl H. Delacato, Jr., Philadelphia, PA

Stephanie Espinoza, Chicago, IL

17505

Boriana Farrar, New York, NY

Daniel J. Fitzgerald, New York, NY

Parker Harrison, New York, NY

Simon Harter, Princeton, NJ

Lynn L. Krieger, San Francisco, CA

Christopher Lowrance, Corpus Christi, TX

Theodore H. Lucas, St. Louis, MO

Jedd S. Malish, New Orleans, LA

Captain Brian McEwing, Cape May, NJ

Arthur F. Mead, III, Jacksonville, FL

John C. Nichols, Alexandria, VA

Pamela L. Schultz, San Francisco, CA

Jess G. Webster, Seattle, WA

Ms. Holland reported that thirty-four applicants have applied for Associate Lawyer membership:

Erika M. Achtziger, New York, NY

Julie A. Aiello, Tampa, FL

Meredith W. Blanque, New Orleans, LA

Brendan Burke, Jr., New York, NY

Douglas Alan Carlen, Sunnyvale, CA

Michelle E. Ceja, Santa Clarita, CA

C. Gregory Chase, New York, NY

Alan E. Colletti, Red Bank, NJ

Charles P. Costanzo, Seattle, WA

Eric S. Daniel, Cleveland, OH

Andrew N. Davis, Ph.D., Hartford, CT

John M. Deitch, Morristown, NJ

Joseph C. Devine, New York, NY

Keith R. Gillette, Walnut Creek, CA

Katherine L. (McClelland) Glenn, Portola Valley, CA

Matthew M. Gorden, New York, NY

Aaron B. Greenbaum, New Orleans, LA

Gavin Hodges Guillot, New Orleans, LA

Christopher M. Hannan, New Orleans, LA

Emily S. Huggins, Cleveland, OH

Christopher S. Kieliger, San Francisco, CA

Jody Taliaferro McCormack, San Francisco, CA

Randolph T. Moore, Costa Mesa, CA

Daniela Oliveira, Houston, TX

Stephanie S. Penninger, Indianapolis, IN

Andrew Pottel, Fairhaven, MA

Delin Qu, New York, NY

Brian J. Schneider, Richmond, VA

Janna Beth Sidley, San Pedro, CA

Robert W. Stack, Milwaukee, WI

Mark E. Tepper, San Francisco, CA

George J. Tsimis, New York, NY

Suzanne (“Suzie”) Brown Vazquez, Doral, FL

Peter D. Waugh, Houston, TX

In addition, there were five persons recommended for Non-Lawyer membership by the Committee on Non-Lawyer Nominations:

Dr. Patrick J. Hudson, Ph.D., PE, Columbia, MD

Louis D. Magnan, New York, NY

Capt. Stephen A. Richter, Philadelphia, PA

Roy J. Scott, Port Jefferson Station, NY

Alexandra Portes-Antoine, Ridgefield Park, NJ

On motion duly made and seconded, the Board approved the above applications.

Ms. Holland regretfully reported learning of the following deaths since our March 12, 2013, meeting:

William D. Carle, III of Lakewood, Ohio; Life Member: elected 1964

Philip G. Myer of Louisville, KY; Proctor Member: elected 1980

John B. Peuler of New Orleans, LA; Associate Member: elected 1984

With the above membership changes, the MLA's total membership now stands at 2,882 and is comprised as follows:

VOTING MEMBERS

Proctors	1325
Associates	1179
Non-Lawyers	178
Academic	26

NON-VOTING MEMBERS

Ex-Officio	15
Honorary	5
Judicial	121
Law Students	33

A discussion ensued over concerns regarding foreign lawyers who are resident in the United States, but who are not admitted to practice here, becoming Non-Lawyer MLA members under By-Law 204. This was addressed most recently at the August 22, 2009, Board Meeting in Quebec, with a concern that foreign Non-Lawyer members would have voting rights which could potentially compromise the MLA's advisory role to the United States government. It was agreed that a possible by-law amendment to address these concerns would be considered at the August 2013 Board meeting.

SECOND VICE PRESIDENT'S REPORT

Mr. Watson reported on his successful efforts coordinating the New York spring 2013 committee meeting schedule, generally concentrating meetings downtown on Wednesday, May 1, and midtown on Thursday, May 2. He reiterated our committee system as the lifeblood of the MLA and opined that the Officers' May 1, 2013, lunch meeting with the Committee Chairs provided a useful exchange of information. Mr. Watson also advised he was working

on updating the Committee Chair *Guide* and would report on this at the Board's August 2013 meeting.

Regarding the MLA logo, Mr. Watson reported he had recently gathered all information necessary to copyright it.

BOARD SUBCOMMITTEE REPORTS

Reprinting of MLA Publications

Ms. Dorgan reported on continuing efforts to prepare guidelines for reprinting copyrighted MLA publications. The subcommittee (also including Messrs. Fisher, Giles, and Powers) anticipated formulating a proposal for the Board's consideration at the August 2013 Board meeting.

Membership Questionnaire

Mr. Minichello reported that the membership questionnaire he and Messrs. Muzyka, Nolan, and Nowell prepared had generated eighty responses and that additional questionnaires would be placed on the sign-in table before the Friday, May 3, 2013, General Meeting of the Association. Even though the subcommittee's members' three year terms on the Board were completed, they would compile the results and forward them to the Board in due course.

OTHER REPORTS

BIMCO

Past President Burrell reported on the activities of the BIMCO Documentary Committee, particularly developments concerning the dispute resolution clause incorporated in BIMCO form contracts. BIMCO's traditional standard dispute resolution clause had included New York and London as two alternative jurisdictions, defaulting to London if no choice was made. In recent years, however, certain new and revised BIMCO forms had eliminated New York as an arbitration venue. There was even a movement to make London the sole named jurisdiction in the standard dispute resolution clause.

Although this effort was defeated, Ms. Burrell continues to monitor the situation closely from her position on a five-person Documentary Committee Working Group on arbitration clauses. Recently, that group drafted the language adding Singapore as a named alternative jurisdiction in the BIMCO standard resolution clause in response to demand for an Asian forum.

Ms. Newman commented that many members of the U.S. maritime industry consider BIMCO forms to be outdated and ill-suited to use in American transactions.

Mr. Nolan suggested that the Marine Financing Committee and other MLA committees consider drafting form contracts in their substantive areas for use as alternatives to BIMCO forms. In discussing his continuing efforts to raise the profile of vessel finance practice in the United States and attract finance lawyers to MLA membership, Mr. Nolan highlighted the opportunities that exist for tailoring U.S. choice of law and New York forum selection clauses in maritime contracts to benefit the industry by harmonizing the governing law in all elements of a transaction.

The Board asked Ms. Burrell to continue to monitor developments concerning dispute resolution clauses in BIMCO forms.

Rotterdam Rules

Past President Hooper provided an update on his twenty-two year odyssey to modernize the law governing the carriage of goods, noting that before committing to the Rotterdam Rules the rest of the world is waiting to see if the United States will ratify them. Mr. Hooper summarized the process of U.S. interagency review of the ratification package, which is currently at MARAD, the Federal Maritime Commission, and the Department of Justice, before it returns to the State Department, prior to moving on to the White House and eventually the Senate for its advice and consent.

46 C.F.R. Part 47 Revisions

Mr. Nolan reported on recent work by the Marine Financing Committee revising 46 C.F.R. Part 67, Documentation of Vessels. This was a largely ministerial, housekeeping undertaking, with no substantive or controversial changes recommended, but was deemed desirable to achieve consistent text in the regulations. The proposed revisions were unanimously approved by both the Marine Financing Committee and the Fisheries Committee earlier in the week. Pursuant to By-Law 504, on motion duly made and seconded, the Board approved transmission of the proposed revisions to the United States Coast Guard for its consideration.

Mr. Nolan also noted that two weeks ago the Coast Guard had invited additional proposed revisions from the MLA on more substantive vessel documentation topics covered by 46 C.F.R. Part 47 and that the Marine Financing Committee would be pleased to work on these to assist the Coast Guard. He anticipated that a supplemental proposal for the Board's approval would be submitted in the future.

Fed. R. Civ. P. 82 Revision

Mr. Powers reported that the Advisory Committee on the Federal Rules of Civil Procedure had requested input from the MLA regarding a proposed amendment to Rule 82 of the Federal Rules of Civil Procedure and that the Practice and Procedure Committee unanimously approved the proposed amendment.

In its current version, Fed. R. Civ. P. 82 refers to "28 U.S.C. §§ 1391-1392" but 28 U.S.C. §1392 was repealed in 2011 and replaced by 28 U.S.C. § 1390(b). Accordingly, the Practice and Procedure Committee prepared a resolution for the MLA's adoption recommending that the Advisory Committee on the Federal Rules consider amending Fed. R. Civ. P. 82 to:

These rules do not extend or limit the jurisdiction of the district courts or

the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is not a civil action for the purposes of 28 U.S.C. §§ 1390-1391.

Pursuant to By-Law 504, on motion duly made and seconded, the Board approved the resolution for vote by the general membership at the May 3, 2013, General Meeting of the Association.

DISCUSSION ITEMS

MLA Website Project

Ms. Krieger reported on substantial work toward updating the MLA website. Following diligent consideration of feedback from the Spring 2012 Committee Chairs Meeting, input from the special committee on website issues comprised of Past MLA Presidents and Website and Technology Committee Chair Marc G. Marling and Vice-Chair Krieger, and recommendations from outside consultant Spencer Sahim, a Request for Proposal was recently sent to ten website firms, with a return date of May 17, 2013.

Regarding the timetable following selection of a bid, Ms. Krieger anticipated that visual representations of the new website would be available for Board review at its August 2013 meeting, with additional developments on display at the Puerto Rico Fall Meeting in November 2013, with an online roll-out before January 1, 2014.

Ms. Krieger advised that the new website would be easier to use with information more accessible than our current version. There would be improved search capabilities for archived and historical documents, enhanced communication among committee members, and email and social media functions for member-to-member interactions.

Administration of the website would remain with the MLA for day-to-day operations, with MLA Administrator Robin Becker

still actively involved. Ms. Krieger anticipated the total cost would not be prohibitive and that a contract with the winning website bidder should be available for Board review and signature at our August 2013 meeting.

Past President Burrell also reported on the status of the Archives Project, noting that almost all numbered MLA documents have been converted to PDFs while many historical “treasures” still need to be identified and catalogued.

Mr. Walsh raised the recurring issue of the MLA’s sale of mailing lists and email blasts to the membership in the context of the new website. While the Board discussion expressed a continuing concern with minimizing the number of communications that are sent to members, it was recognized that easier communications via the website merit further consideration. Accordingly, President Parrish may appoint a new Board subcommittee to coordinate with Ms. Krieger on these issues.

CMI Future Study Group

Past President Burrell reported on the recent establishment of a working group she is chairing, comprised of representatives from BIMCO and five national MLAs, to assess the future role of the Comité Maritime International in the development of international maritime law.

MLA/TALI and MLA/PAS

First Vice President Clyne, Second Vice President Watson, and Mr. Nowell led a discussion on the possibility of MLA joint sponsorship of upcoming fall meetings.

Mr. Watson commented that the Tulane Admiralty Law Institute had given very favorable consideration to moving its 50th anniversary forward from the spring of 2017 to the fall of 2016 to coincide with a New Orleans MLA fall city meeting. He also noted that a fall 2015 resort meeting either on Bermuda or in Northern California (the Napa Valley or Monterey) was under consideration.

Mr. Nowell reported that the Pacific Admiralty Seminar continued to be very interested in working with the MLA, even for a fall 2015 joint MLA/PAS meeting, despite PAS meetings normally being held in even-numbered years. He anticipated that such a West Coast meeting would draw new Associate Lawyer and Non-Lawyer members alike to the MLA.

Federal Judicial Education

Mr. Nowell and Mr. Walsh reported on continuing efforts to coordinate with the Ninth Circuit and the Federal Judicial Center in preparing a program to educate judges on admiralty and maritime law topics. It is anticipated that the program will commence in 2014 and will be gratifying for the MLA.

FUTURE MEETINGS

Puerto Rico Fall 2013 Joint Meeting with IDM

Mr. Radcliff reported on plans for the Fall 2013 resort meeting in Fajardo, Puerto Rico, October 30 to November 2, 2013. Efforts to collaborate a joint meeting with the Instituto Iberoamericano de Derecho Marítimo (“IIDM”) have been proceeding very well and projected costs and revenues were addressed. A brochure of the El Conquistador resort was circulated for the Board’s review and a tentative schedule of events was discussed. The Board was pleased that an excellent program is shaping up.

Philadelphia Fall 2014 Meeting

First Vice President Clyne provided an update on the fall 2014 city meeting that will be held in Philadelphia, Wednesday, October 22 through Friday, October 24, 2014. It will be co-chaired by Frank P. DeGiulio and Henry C. Lucas, III.

CMI 2016 Conference in New York

Mr. Foley initiated a report to the Board on planning activities underway for the MLA’s hosting the Comité Maritime International Conference in New York during spring 2016.

He conceptualized a six day CMI meeting starting Sunday of MLA week and running through Friday with a joint gala dinner. With perhaps as many as 1,500 diners, a large hotel such as the Waldorf was under consideration, where the gala dinner following the CMI New York Conference was held in 1965. Ideas for possible coordination between the CMI and MLA during the week were addressed.

Mr. Foley reported that three conference organizers offering different financial arrangements were under consideration to manage marketing, venue selection, hotel room block reservations, etc. These details will have to be finalized in the next few months.

Importantly, Mr. Davis reported he had discussed the Board's serious concerns about the MLA's financial exposure (as expressed at its March 12, 2013, meeting) with the CMI and advised the Board that the CMI has expressed its willingness to be flexible regarding its conference guidelines and deposit requirements. Mr. Davis expected to obtain further assurances along these lines from CMI President Stuart Hetherington and Secretary General Nigel Frawley, with whom Messrs. Davis, Foley, and Schmidt were scheduled to meet over the upcoming weekend, noting that the CMI was enthused about New York City as a draw for its membership around the world.

Past President Bonner noted reciprocally that holding the CMI conference during MLA week would benefit the MLA with an influx of foreign lawyers and President Parrish summed up the plans with optimism that a workable management contract would soon be achieved without jeopardizing the MLA fisc.

Upon finishing the Board's business, President Parrish noted his great pleasure in dealing with the current Directors and their invaluable advice and counsel, and the meeting was then adjourned.

Respectfully submitted,

David J. Farrell, Jr.
Secretary