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| **Marine Financing** |
| **Source:** MLA **Doc. No.:** 765 **Date:** May 3, 2002 **Committee:** [MARINE FINANCING](http://www.mlaus.org/committee-profile.ihtml?id=150)   **FORMAL REPORT OF THE COMMITTEE ON**  **MARINE FINANCING**    The meeting of the Marine Financing Committee of The Maritime Law Association of the United States was held on May 1, 2002, at 2:00 P.M., in the offices of Haight Gardner Holland & Knight, 195 Broadway, Suite 2400 (Conference Room E/F). Sandra L. Knapp, Chair of the Committee, presided. She announced that Admiral Loy of the United States Coast Guard ("USCG") responded to our request to expedite certain regulations. Admiral Loy informed us that other priorities, namely national security, precluded initiatives regarding vessel documentation issues. The Committee heard reports from its various Subcommittees and *ad hoc*committees, including the following:    A. Paul Wiese of the U.S. Maritime Administration spoke about current developments with respect to the American Fisheries Act and Title XI Ship Mortgage Guaranties.    B. With respect to the USCG, Paul Wasserman introduced himself and spoke about the USCG's expanded emphasis on security issues and its delays in addressing other regulatory initiatives on account of the shift in emphasis to security following September 11.    C. Stefan Cassella of the U.S. Department of Justice and Bob Zapf reported on proposed Rule G of the Federal Rules of Civil Procedure concerning forfeiture proceedings. After discussion, it was determined that the Committee could only express its general support in favor of a rule without making recommendations or resolutions in support of specific provisions. After discussion, it was moved, seconded and resolved as follows: "In accordance with previous resolutions of this Committee, the Marine Financing Committee supports the concept of a separate forfeiture rule." The Secretary of the Committee was directed to report the terms of the resolutions and the minutes of the meeting.    D. Peter Gibbs and Professor P.K. Mukherjee of the Cayman Islands Shipping Registry made a presentation concerning maritime administration in the Cayman Islands, including a number of provisions liberalizing the application of the Cayman Companies Act and certain ship registry advantages. Mr. Gibbs noted that the concept of a qualified foreign company had been adopted in the Caymans much the same as in Liberia and the Marshall Islands. He further reported that the concept behind the 64/64ths expression of the entire interest in a vessel had been viewed more flexibly to permit fractional share interest in different ownership structures in common use in the industry. These gentlemen requested feedback as to whether certain U.S. entities, such as limited liability partnerships, should be able to register vessels in the Cayman Islands. They also reported that a vessel under construction could be made the subject of a ship mortgage under Cayman's law and that the law had been changed so that a vessel under construction was considered now to be a "vessel" or "maritime property." A vessel is deemed created under Cayman's law when the keel is laid. An owner grants the mortgage but, given recognition to the complementary interest of owners and builders during the construction period in many jurisdictions, the consent of the builder is also required in order to permit the mortgaging of a vessel under construction under Cayman's law. A substantial discussion followed these remarks, and questions were put to the gentlemen as to whether the status of any vessel under construction in a jurisdiction outside the Caymans would be affected by a security interest provision under Cayman's law. The gentlemen conceded that local law in the jurisdiction of enforcement would have a great bearing on the outcome as well.    At this point, the Chair requested Committee reports. The Chair noted that no resolutions were being offered for consideration by any Subcommittee.    E. Subcommittee Chair Mr. Arnason was absent from the meeting, and the earlier report on Rule G and the bankruptcy cases, specifically the MILLENNIUM case, were referred to as submissions of the Joint Subcommittee on Vessel Foreclosures and Insolvency.    F. Charles S. Donovan, Chair of the Subcommittee on Maritime Liens and Mortgages, next reported on the discussions of that Subcommittee earlier in the day. This included proposed notice of claim of lien ("NCL") amendments to the Commercial Instruments and Maritime Liens Act. Mr. Donovan also raised the question of proposed NCL provisions which could be filed against fisheries permits. Finally, Mr. Donovan raised the subject of Canadian enforcement of U.S. maritime liens and, in particular, the fact that Canada alone among the Commonwealth nations recognized liens beyond those recognized in its own system, such that U.S. liens recognized in the U.S. law and incurred in the U.S. would be enforceable in Canada. Mr. Donovan also noted that Canadian law places a maritime lien in a superior position to a mortgage lien, even if under U.S. law the maritime lien would be inferior to the mortgage lien.    G. Derrick Betts spoke on behalf of the Subcommittee on Taxation and, referring to the February 2000 proposed regulation on Section 883, reported that no action has been taken in that proposal since June of 2000.    H. Thomas Whalen spoke on behalf of the USCG Documentation, U.S. Citizenship and Related Matters Subcommittee. Mr. Whalen addressed the still-pending "sold foreign" Request for Comments published on September 12, 2001. This Request for Comments posted the interpretation of the USCG that the term "sold foreign" includes the transfer of ownership interests in a business entity to persons who are not U.S. citizens or to persons who are no longer eligible to document a vessel under U.S. laws. The USCG's troublesome interpretation is found in its view that, once a business entity no longer meets the statutory requirements, the vessel has been sold foreign even if, in fact, the vessel has not been sold or transferred, but rather that interest in the entity has been transferred or the citizenship of officers or directors has been changed in such a way that the vessel now no longer qualifies. It was determined that the interests of the MLA membership were too varied to permit a unified commentary from the Committee to the USCG. The membership was encouraged to submit individual comments with respect to this Request.    I. Robert Fisher addressed the Committee on behalf of the Yacht Financing Subcommittee. He reported on a number of continuing issues involving the surrender of state title upon federal documentation and developments with respect to hull identification number requirements. He further reported on Subcommittee meeting discussions concerning the Fair Debt Collection Practices Act. Mr. Fisher suggested that the Committee consider proposing some regulatory guidance for self-help remedies in boat repossessions and raised the possibility of a temporary Certificate of Documentation as a solution to the delays in issuance of a permanent Certificate. During the course of discussion, reference was made to the private posting facility online for services intended to provide clearinghouses of information on maritime liens and claims, including "marineliens.com."    J. Marjorie Krumholz addressed the Committee on behalf of the*Ad Hoc* Subcommittee on Title 46 Recodification and summarized the extensive list of issues identified by the *Ad Hoc* Subcommittee in the proposed recodification, including provisions which, in the view of the *Ad Hoc* Subcommittee, would tend to eliminate the recognition of a "documentation citizen" eligible to document a vessel for foreign registry or to document a vessel for lease to a coastwise-qualified entity under 46 U.S.C. 12106(e).    K. Francis X. Nolan, III, addressed the Committee on developments concerning synthetic leases, including the anticipated issuance of a report by the Financial Accounting Standards Board (FASB), which is expected to increase the percentage of required third-party investment in lessors in such structures to 10% or more.    L. The Chair then requested any further comment on old business. In the absence of Steve Johnson, proposed regulations issued with respect to the American Fisheries Act were distributed.    M. David Williams described certain issues in H.R. 3507, the USCG authorization bill concerning the expansion of the ability to file NCLs to include vessels which are documented but against which no mortgage has been filed. Mr. Williams invited comments for improvements and noted that some insightful comments had already been generated in the Subcommittees' morning sessions, including Mr. Nolan's concern that the bill as drafted serves to permit jury trials in NCL declaratory actions.    N. Charles S. Donovan and Charles D. Brown addressed the Committee on the subject of UNIDROIT. They suggested that the failure to reach agreement on a protocol to bring ocean cargo containers within the coverage of the Convention on Mobile Equipment would require that any future addition be accompanied by an amendment to the Convention.    O. Jim Bartlett addressed the Committee on the issue of multijurisdictional practice and noted that the MLA favors safe harbor federal practice.    On the subject of new business, the Chair raised the question of UCC Article 7, which is under consideration with respect to title documents. The Chair inquired as to whether or not any members present were interested in participating in the project related to the review of the new Article 7 as it may affect the type of practice considered in the Committee's work.    The meeting was adjourned at 4:30 PM.    Respectfully submitted,    Sandra L. Knapp, Chair |