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| **Reports of Officers** |
| **Source:** MLA **Date:** October 19, 2001  **PROCEEDINGS**    PRESIDENT DORSEY: I'll ask you to begin taking your seats, please. There are plenty of seats up front, and I promise that I'm not going to call on you just because you're sitting up front.  Good morning, ladies and gentlemen. I'm going to get underway here. Just a couple of brief announcements.  In the back of the room is the latest edition of MLA Report. This is a special edition devoted solely to the publication of the Marine Protection and Indemnity Policy Annotation Project. This collects in one volume annotations to the primary provisions of the most frequently used U.S. marine P&I policy forms. It's quite a work. A lot of effort went into it, and this is the result. Copies will be mailed to all members, but there are extra copies in the back of the room for those of you who want an extra copy and, of course, for our friends from abroad. Also in the back of the room, if you want a little light bedtime reading, is my summer/fall *Newsletter*guaranteed to bring on sleep after about five minutes. Again, that's on the website. It is also mailed to all members and to the presidents of the Maritime Law Associations throughout the world, but not mailed to all the foreign guests that we have here today. So that's there if they'd like it.  We'll open the meeting now with a report from our Secretary.  MS. BURRELL: Good morning, Mr. President, members and guests. I would first like to mention two administrative matters. One is that there are blue cards in the back of the room. I urge you to sign one of these cards so that your attendance can be reflected in the Proceedings of this meeting.  The other item is that every speaker should give a business card to the reporter so that she can get your name right and I can then send you the portions of the transcript that reflect your remarks so that you can make sure that they are accurate.  The Board met on August 3 in New York by telephonic conference and also on Tuesday and this morning here at the Hotel del Coronado. We heard reports from the officers and from several Committees, some of which you'll get directly from their sources a little later this morning, so I won't duplicate those here. Our President, however, will not be describing his many efforts on behalf of this Association; so I'll tell you a little bit about some of them right now. They are more amply reported in the *President's Newsletter* which is not only available on the tables in the back but also on our website.  Among the President's activities was his attendance at the Canadian Maritime Law Association meeting at which that Association celebrated its 50th anniversary. President Dorsey was joined by Immediate Past President Howard McCormack and Past President Jim Moseley as well as First Vice President Ray Hayden. In an effort to reciprocate some of the kindness and recognition that they showed us at our Centennial, our Association hosted a reception and presented a banner in honor of the Canadian Maritime Law Association's 50th birthday.  In addition, President Dorsey attended the Average Adjusters meeting in London in May, and also the SEALI conference in June at which he spoke about the *Cammon* case, which I'll mention a little later in connection with our *amicus* activities.  President Dorsey also attended the Coast Guard's Shipping Coordination Committee meetings in both July and August which centered on the draft protocol to the Athens Convention, which was also the subject of some of Steve Martin's very insightful comments at yesterday's seminar and will be fully discussed later today in the report of the Cruise Committee by its Chair, Ann Miller. In addition, President Dorsey gave a paper at the Houston Marine Insurance Seminar on the subject of the Athens Convention draft protocol.  The Association continues its extensive activity in the international arena. A major topic, in which we're very heavily involved and which was dealt with very comprehensively at the Wednesday meeting of the Carriage of Goods Committee, was the present draft of the CMI International Sub-Committee on Issues of Transport Law. I'll leave a discussion of that draft and its status to Michael Sturley and to Don Greenman who will be reporting on the activities of the CMI International Sub-Committee activities and the Association's Carriage of Goods Committee. This morning at its meeting the Board approved a position paper which will be forwarded to the CMI commenting on the current UNCITRAL draft document on transport law.  Another international activity the CMI project headed by Francesco Berlingieri to collect cases from all over the world that interpret maritime conventions. Dr. Berlingieri has requested that anybody who knows of a case that interprets a maritime convention to forward it to him so that he can include it in this study. Having mentioned Dr. Berlingieri and the CMI, I should like to add that not only has this Association received letters from other national maritime law associations expressing their sorrow and sympathy concerning the events of September 11th, but also that Dr. Berlingieri has advised President Dorsey that for the next year on the 11th of each month there will be a memorial mass, a special mass, held at his church, St. Marta's, in remembrance of the victims.    We continue to act as advisors to U.S. delegations to the IMO Legal Committee which met during the week of October 8 in London. The main topic was the draft protocol to the Athens Convention. Before that meeting of the Legal Committee, the Cruise Committee of this Association had gathered comments and made recommendations to the Board after which President Dorsey prepared a position paper based on industry reaction and the historical concerns of this Association which was sent to the Coast Guard in an effort to shape the views of the U.S. delegation. At the same meeting of the IMO Legal Committee, the IMO/ILO resolutions on repatriation and contract claims of seafarers was also passed. Work on a convention on offshore mobile craft was taken off the agenda of the IMO Legal Committee because of more immediate concerns with work on places of refuge and suppression of acts of terrorism.  The Board also received a comprehensive and very thoughtful report from John Kimball on the July meeting of the Joint International Group of Experts considering the UNESCO Convention on Underwater Cultural Heritage. John is not only Chair of the Association's Study Group on Underwater Cultural Heritage but also the rapporteur of the CMI's Working Group on this subject. John's report, by the way, is also available in full on our website. The Association has already criticized the provisions of the draft UNESCO Convention on Underwater Cultural Heritage because it would abrogate the law of salvage and finds and oust the courts of jurisdiction over objects that have been underwater for more than 100 years. It would deny recognition of any kind of commercial usage of recovered artifacts. Its definition of "underwater cultural heritage" is overly broad. In addition, that draft Convention would potentially conflict with the Law of the Sea Convention.  John Kimball reported that the Working Group has finished its work and that a vote was taken, which in and of itself is a departure from the custom in drafting conventions in which consensus is usually sought to approve the draft. Maritime nations don't support this draft, but because of the composition of UNESCO, there will be no review of this Convention by the United Nations Security Council. Mr. Kimball noted that there may be some attempts to modify the language of the current draft before it goes to the U.N. General Assembly, but there won't be any diplomatic conference prior to its submission to UNESCO.  The U.S. delegation's main objection to the current draft is its extension of coastal state jurisdiction to the exclusive economic zone out to the continental shelf which is, as I mentioned, regarded as a potential violation of the Law of the Sea Convention. Other problems exist in the ambiguity of jurisdictional provisions, but proponents of the draft have argued that this ambiguity is both constructive and desirable in that it would leave states which became parties to the Convention free to interpret its provisions in a very, very flexible manner. Of course, that would defeat the purpose of most conventions which is to achieve uniformity throughout the signatory nations on how these matters will be treated.  The current draft is in direct conflict with virtually all of the positions taken by the Association, and the Association was encouraged by Mr. Kimball to continue its work with the U.S. government in the valuable objective of trying to protect underwater cultural heritage but in a way that is more consistent with the recognition of other rights.  Moving on to domestic issues, with the endorsement of the Board, Past President Chet Hooper, our delegate to the ABA's House of Delegates and also the Chair of our Committee on the ABA supported a resolution making unpublished opinions generally available and permitting their citation. That resolution passed in the ABA House of Delegates. On the other hand, the Ninth Circuit has just decided that you can't cite to an unpublished opinion; so this will remain a very uncertain area and one that will continue to concern us.  Past President Hooper also reported on the status of the new COGSA proposal, but, again, that will be covered in a later report.  The Electronic Communications and Commerce Committee, chaired by Glen Oxton, is studying issues arising from the court's increasing use of electronic filings which is definitely raising some interesting problems for practitioners.  The Environmental Crime Subcommittee, chaired by Fred Kuffler, authored a position paper to be forwarded to government officials noting the Association's recommendations, which have received Board approval over the past few years, concerning environmental crimes. The Board approved the position paper, and the Subcommittee will now formulate a plan for approaching relevant government agencies to express the Association's concerns with the current state of the law. The paper reiterates the Association's longstanding positions that OPA was intended to prevent pollution and facilitate its cleanup rather than to promote criminal prosecutions, and that the current state of the law, which criminalizes negligence, interferes with investigations, discourages voluntary disclosures and cooperation during investigations, and hampers businesses in their efforts to discover what really went on so that they can take corrective action and make sure that these same conditions do not occur again.  Consistent with the resolution proposed by the Fisheries Committee and adopted at the General Meeting last May, a statement was forwarded encouraging the deferral of the effective date of the American Fisheries Act. The resolution proposes a deferral to allow development of amendments to protect current holders of preferred ship mortgages on fishing vessels 100 feet and over as well as the interests of their registered owners. That effective date has now been extended to permit for development of appropriate amendments.  In the area of Navigation, Coast Guard and Government Regulation, President Dorsey reported that in June, Representative Green introduced a new bill in the House entitled the Maritime Disaster Family Assistance Act. The proposed legislation would delegate to the Secretary of Transportation certain duties to assist families of victims of maritime disasters and would also prohibit certain parties from contact with families of victims for the purpose of soliciting lawsuits within 45 days of the disaster.  In the area of Practice and Procedure, pursuant to the Association's resolution at the May meeting, President Dorsey forwarded to the Advisory Committee on Federal Rules the Association's position that Rule B should be clarified so that the time for determining when the defendant is not found within the district should be the time that the complaint is filed. Association member Mark Kasanin, has had his term on the Advisory Committee extended, no doubt because of his invaluable contributions and expertise on maritime procedure.  Pursuant to the Association's action at the May meeting, President Dorsey forwarded to the State Department our resolution recommending denunciation of the 1910 Salvage Convention.  Of course, Tony Whitman, who chaired the Planning and Arrangements Committee for this meeting, reported frequently to the Board about all of the work that was being done to prepare for this meeting. I think that the splendid time that we've all had here is, in and of itself, a sufficient report on the success of all of those preparations, and I would like to say thank you to all members of the Committee right now.  We've also had *amicus* requests over the past several months. Most of them have been denied consistent with the Association's general policy of authorizing such briefs sparingly. Indeed, the wisdom of that approach was illustrated in connection with*Cammon*. That case involved a fall by a worker on a floating platform, possibly caused by the surge of a passing tug. The court had denied defendants' motion to dismiss a claim brought under the state labor law, and defendants planned to petition for*certiorari*. We declined to participate as *amicus* on the basis of the procedural status of the case. President Dorsey, however, asked the parties to keep him advised of the progress of that case. Subsequently we learned that the defendant had been unable to satisfy the Supreme Court's finality doctrine and, therefore, wasn't going to file a petition for *certiorari*, showing that our reticence to join in was justified in that case.  The Association did, however, file an *amicus* brief in the case of*U.S. Titan versus Guangzhou Zhen Hua Shipping Company*, because of the very unusual circumstance that the Second Circuit, on a petition for rehearing *en banc*, asked for *amicus* briefs from maritime law and trade organizations. The sole issue on the petition for rehearing was whether or not the Second Circuit should overturn its prior precedent in *Great Circle Lines*, in which the court had held that a fixture sub details always constitutes a binding charter. President Dorsey expressed the appreciation of the Association to Don Kennedy, who is Chair of the Committee on Maritime Arbitration and Mediation, for the Committee's recommendations which were formulated on a very, very expedited and pressured basis, and to board members Jay Paré and Vince DeOrchis and Committee member Keith Heard for their efforts in writing the brief. A copy of that brief is available on the website.  As you may have noticed from my many references to our website, it has been much improved. It has now a "What's New" section, as well as having a more extensive library and many, many valuable elements that I think you will find of great use. I urge you to visit the website and explore its many features because it will become increasingly a method of communication for this Association.  The last official item on my report is to offer congratulations to immediate Past President Howard McCormack who has been nominated to chair the Average Adjusters for the coming year.  Finally, on a personal note, I would like to thank President Dorsey and Winston Rice and Bette Cohen for the fine commemorative service, which was very moving and very appropriate. I would also like to thank all of the members of the Association. As a New Yorker, I must say it has meant a great deal to me to hear your sympathy, your sorrow, and your support. I'm sure that I speak for everybody who was nearer to these events geographically when I say, "Thank you very much."  Mr. President, that concludes my report. I respectfully move its adoption.  PRESIDENT DORSEY: Is there a second? (Chorus of seconds.)  PRESIDENT DORSEY: All in favor say aye. (Chorus of ayes.)  PRESIDENT DORSEY: Opposed? (No response.)  PRESIDENT DORSEY: The motion is carried and the report is adopted. Thank you very much, Liz.  You can see why Liz is an indispensable treasure to this Association. She's got a mind like a steel trap, and she articulates things better than-I mean, I wish in my wildest dreams that I could articulate things the way she does. She also has other talents that weren't really expressed or shown from her report that had to do with the Canadian Maritime Law Association meeting and the banner that we gave as a present to the CMLA because it was Liz who essentially designed and oversaw the manufacture or the production of that banner. She's a woman of many talents, and I don't know what I would do without her. Thank you, Liz, very much.  I might add one other thing in connection with her comments about the UNESCO Convention on Underwater Cultural Heritage, which is to report that Patrick Griggs, President of CMI, has written to the director general of UNESCO advising him that he could see no possibility that the CMI would be able to support the draft Convention in its current form. We aren't the only ones that are rattling the sword about that Convention, and I'm glad to see the CMI take that position. Now we'll have the report from our Treasurer.  MR. BONNER: Thank you, Mr. President.  As someone who works near the World Trade Center, I'd like to echo Liz's thanks to you all for your sympathy and understanding and inquiries.  Today the MLA has assets of about $135,000. Last year at this time we had assets of about $200,000; so we're about $65,000 down. There are a number of reasons for this.  The general treasury loaned about $33,000 to Coronado Committee as seed money for this meeting, I expect to get that back.  Our printing costs have continued to increase. We are looking into ways of reversing this trend, and we may be using our web page more to reverse the increases on both the printing and the postage.  We also had expenses due to the CMI meeting in Singapore, and we've had additional travel expenses which continue over the past few years for various international projects, such as the CMI Transport Law, UNESCO, and various other ones. However, I'd like to assure you that we do have sufficient assets to fund and operate and to maintain all of our activities and to fulfill all of our goals.  We are continuing our efforts to weed out those who do not pay dues. Last year we struck many members from the rolls. In fact, we sent out $17,000 less in invoices this year than we did last year. That's how many people that we dropped from our organization for nonpayment of dues. However, our dues collection this year has equaled last year's, so we haven't lost any money due to this. We're in the process of sending out a lot of letters to people who owe dues, and if you do get a letter signed by me, you should answer it. Answer it with a check, or else you may find that you're not a member of the organization.  Finally, we had our annual audit by a national accounting firm in the summer. They come to my office and they spend a few days looking through the books. I'm happy to say they found nothing amiss. Please let me know if you'd like to read a copy of our audit. It's really fascinating, and I'm sure you'll all really enjoy it.  Mr. President, this concludes my report, and I move for its adoption.  PRESIDENT DORSEY: Thank you, Pat. Is there a second?  (Chorus of seconds.)  PRESIDENT DORSEY: All in favor of the motion, please say aye. (Chorus of ayes.)  PRESIDENT DORSEY: Opposed? (No response.)  PRESIDENT DORSEY: The motion is carried, and the report is adopted. Thank you, Pat. You'll understand now the reason why there are no coffee or bagels in the back of the room here.  Membership Secretary Winston Rice.  MR. RICE: Thank you, Mr. President.  As of a week ago, the membership of this Association was 3,327. At its meeting on Tuesday, and ratified earlier today, the following five associate members were elevated to the status of proctor. That would be Mike Armitage of Long Beach, Susan Dorgan of New York, Grady Hurley of New York, Brett Kelly of New York, and David Smith of Beverly.  In addition, the Board approved my recommendation for admission to associate membership of thirteen new members as well as the new nonlawyer members Paul A. Smith of New York, Bob Toney of Fort Lauderdale, and Stephen Gillen of New York.  I regret to advise that since the last General Meeting of the Association in New York, I've learned of the death of the following among our membership: Professor Charles Black of New York; James Dixon of Miami; Sam Levinson of Seattle; Donald Rogers of New York; Judge Thomas of Cleveland; Thomas Ward of Staten Island; Glenn Winuk of New York; and Judge Caleb Bright of Wilmington, Delaware.  At this point in my report, Mr. President, I'd like to ask that we observe a moment of silence in memory of these members who have passed as well as for the victims of September 11 and those whose lives were closely linked with theirs. (A moment of silence.)    MR. RICE: Thank you.  So, Mr. President, with these activities, it appears that we have been somewhat successful in replenishing our membership ranks at the bottom in replacement of those at the top who our Treasurer has flushed out by means of expulsion for nonpayment of dues, as well as ordinary attrition due to deaths and withdrawal from practice. With the actions I've previously reported, our membership numbers as of this morning stand at 3,348. I ask that this formal part of my report, Mr. President, be received and approved.  PRESIDENT DORSEY: Is there a second to that motion?  (Chorus of seconds.)  PRESIDENT DORSEY: All in favor of the motion please say aye.  (Chorus of ayes.)  PRESIDENT DORSEY: Opposed?  (No response.)  PRESIDENT DORSEY: The motion is carried and the report is adopted.  MR. RICE: Mr. President, I have a few more membership-related matters, if I may.  PRESIDENT DORSEY: Sure.  MR. RICE: The directories have been mailed. We unfortunately received return from the United States Postal Service of about 100 directories, the address information on which was blurred beyond recognition. We have absolutely no way of knowing to whom these directories were addressed and for whom they were intended. If you have not by now received your copy of the 2001-2002 Membership Directory, please call 1-800-MLA-LIST, that's 1-800-MLA-LIST, and ask that you be sent another copy of the directory.  In spite of the fact that we continue to stay ahead of attrition in our membership numbers, we would like to attract even more members, especially those who represent plaintiffs, personal injury and death plaintiffs, among whose numbers we have not enough, quite simply. So if you're taking a deposition with someone, please let them know that they should apply for membership and see our website for information on how to do that.  Chet Hooper has asked me to announce that there will be a memorial service for Glenn Winuk held this coming Wednesday, October the 24th, at 2:00 o'clock in the afternoon. The service will be held at what used to be called Park Avenue Synagogue. I think it may still be called that, but it also may have another number. In any event, it's on East 85th between Park and Lexington Avenues. If you would be kind enough to send Chet an e-mail if you plan to attend so he could insure that there will be adequate seating and arrangements to be made for that.  Additionally, Ann Miller, Chair of the CLE program at this meeting, has asked me to remind you of the need to submit your forms so that you can get credit for your participation in the CLE event. In connection with this, Ann is present this morning at the back of the room. She will be here only until 11:00 o'clock at which time she has a professional matter requiring her attention. In any event, you can see her for a form for completion if you haven't already, and I urge you so to do. Additionally, there are extra copies of the CLE booklet which was prepared, and you may want to pick up an extra one or two of these for submission to your respective states for approval of your CLE credits.  Finally, there is, across the way over there in the Garden Room where you registered, a lingering stock of significant haberdashery items which we, from time to time, have to offer to our membership and others consisting of ties and burgees, fantastic MLA bow ties, as a matter of fact, which are suitable for wear with your tuxedo when you're attending formal affairs. They can either be blue or crimson as these are, and I commend them to you. There have been significant reductions in our prices, and if you don't like our reduced price, make an offer.  Mr. President, this concludes my report.  PRESIDENT DORSEY: Thank you, Winston. |