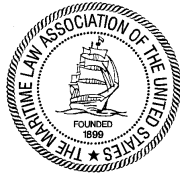


[13747]



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November 1, 2003

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING—NOVEMBER 1, 2003

PRESENT:

RAYMOND P. HAYDEN

THOMAS S. RUE

LIZABETH L. BURRELL

WARREN J. MARWEDEL

PATRICK J. BONNER

PHILIP A. BERNS

WILLIAM R. DORSEY, III

and the following 101 members: (Total 106)

Manfred W. Arnold

Roman Badiak

Joseph Basenberg

Richard C. Binzley

Forrest Booth

Lawrence J. Bowles

Lawrence B. Brennan

Richard H. Brown, Jr.

Dennis L. Bryant

Phillip A. Buhler

Lucienne Bulow

Barbara D. Burke

James G. Burke

Paul E. Calvesbert Borgos

David L. Carrigee

William E. Cassidy

Edward V. Cattell, Jr.

Robert G. Clyne

Mark T. Coberly

Michael Marks Cohen

William R. Connor, III

James P. Cooney

Richard A. Corwin

Christopher O. Davis

Frank D. DeGiulio

Charles G. DeLeo

Vincent B. DeOrchis

William R. Dorsey, III

Paul S. Edelman

John A. Edington

Warren M. Faris

David J. Farrell, Jr.

Robert B. Fisher, Jr.

Carter B.S. Furr

Geoffrey J. Ginos

Robert S. Glenn, Jr.

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Glenn G. Goodier
W. Clark Gormley
Donald C. Greenman
Robert J. Gruendel
Michael O. Hardison
Chester D. Hooper
Mark R. Houck
Stephen B. Johnson
Lawrence J. Kahn
Kimbley A. Kearney
Samuel A. Keesal, Jr.
Donald J. Kennedy
John D. Kimball
Bruce A. King
Sandra L. Knapp
Victor I. Koock
Michael J. Kucharski
LeRoy Lambert
Charles R. Lane
Edward F. LeBreton, III
Dwight J. LeBlanc, Jr.
Richard M. Leslie
Herbert M. Lord
Henry C. Lucas, III
Patrick J. Maloney
Matthew A. Marion
Marc G. Marling
Janet W. Marshall
Patrick V. Martin
David W. Martowski
Robert K. Marzik
Raymond L. Massey
Marion E. McDaniel, Jr.
Samuel P. Menefee
Dennis Minichello
James F. Moseley
James F. Moseley, Jr.

Thomas O. Murphy
Carl R. Nelson
David R. Nourse
Hazel W. Nourse
George W. Nowell
Ashton R. O'Dwyer
John Eric Olson
Armand M. Paré
Robert B. Parrish
Donald C. Radcliff
Stephen V. Rible
Barbara L. Ristow
David DeC. Robels
James B. Rockmeyer
John C. Scalia
John P. Schaffer
Charles E. Schmidt
Gordon D. Schreck
Lee A. Thorson
Alan Van Pragg
Thomas H. Walsh, Jr.
Harold K. Watson
Gerard W. White
James F. Whitehead, III
M. Hamilton Whitman, Jr.
Frank L. Wiswall
Robert J. Zapf
JoAnne Zawitoski

And the following 5 guests:

Michael Bird
Peter Cullen
Cherkaoui Hassanida
Martha Rodriguez
Peter Ruitiuga

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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING
BOCA RATON, FLORIDA
NOVEMBER 1, 2003

PROCEEDINGS

MR. HAYDEN: Good morning, ladies and gentlemen. If you'll all take your seats, we'll get started with the General Meeting.

I would stress that we would like each of the participants to be sure to sign in so we have our quorum for our general business meeting.

Good morning. And I want to thank you all for coming. I know it's a post Halloween morning, and many of you have found it difficult to be here. But I do welcome you to the Maritime Law Association's General Business Meeting at Boca Raton.

Before I start our meeting this morning, I would like to express a special welcome to our foreign and non-member guests attending our meeting here this week.

We've had with us, in Boca Raton, Admiral John Crowley, who is the Coast Guard Judge Advocate General and Chief Legal Counsel. Captain Joseph Ahern, who is Chief of the Maritime International Law Division of the Coast Guard, and their assistant, Lieutenant Martha Rodriguez. They've been with us this week and I'd like to thank them for being here.

We also have present at the meeting the President of the Canadian Maritime Law Association, Peter Cullen.

I believe that we also have here Ignacio Melo, who is the President of the Mexican Maritime Law Association. Is he here this morning? Well, he was with us last night at the Halloween affair.

We had Rui Fernandez, who was President of the Canadian Average Adjustors. I believe he went home last night.

And we have David Martowski, President of the Society of American Arbitrators. David, you're here, are you not?

[13752]

In addition to the guests that I have specially recognized, we have with us guests from Argentina, Australia, Bermuda, Belgium, Canada, Chile, England, Holland, Japan, Korea, Mexico, Morocco, Norway and Venezuela. And if I've missed any countries I apologize, but you are welcome and we're delighted that you're here.

I'd also like to express the Chair's thanks and gratitude to the speakers who put so much effort into making our CLE program a success and also those who spoke at our various committee meetings.

Speakers and the committee work is the back bone of our Association and we thank them for all their efforts.

You are all aware of the sudden change of location of this meeting from Bermuda to Boca Raton. The fast reacting Planning & Arrangements Committee, under the chairmanship of Bob Parrish, has done a magnificent job under very short notice and under adverse working conditions. They'll be here a little after 10:00 and I want to take that time to introduce each and every one of them individually. And I want to express our thanks for all they've done to bring this meeting to what we have here today.

It is a rare occasion when the chair does not receive numerous, should I say, many complaints and suggestions about what the MLA can do better, what we should have done, what we didn't do and where we should be.

I'm proud to say that I've heard only comments of praise about this meeting and thanks to the Association and all the efforts that have been made by the committee that did all the work.

If we can now get on to our regular business of the meeting. I'll call upon the Secretary.

MR. MARWEDEL: Good morning, Mr. President, members and guests.

First of all, I want to remind everybody again to sign in on the sign-in sheets at the back of the room. We need that for our quorum check. If you're going to be presenting a formal written report, e-mail it to me in Word format.

And also, speakers, please give your business card to the court reporter.

Since the Spring meeting in New York, the Officers and Board have met in Seattle, Washington in August and here in Boca Raton.

[13753]

On behalf of the Board of Directors, I want to thank Jim Whitehead, Bruce King and the Seattle MLA Bar for making the arrangements and for their kind hospitality.

The local members put on a nice seminar on the nature and extent of the practice in the Northwest.

The MLA has continued its international participation in various forums and several reports have been made to the Board.

President Hayden reported on the current status of UNCITRAL, COGSA and the MLA's working group activities.

The U.S. Department of State has been consulting with various governmental and transportation groups on a compromise on defenses, limitations and forum selection. There was a presentation on some of these issues by the Carriage of Goods Committee during the week. And, we should hear more about that later on today.

Director Jay Paré said that the current UNCITRAL draft is on the UNCITRAL website. In reviewing it, he reported there were issues concerning the impact on freedom of contract, and that the MLA may have to address this. The draft reportedly covers both common and private carriage, but has a public carriage gloss with limitations on the ability to derogate from the instrument.

President Hayden reported on the CMI colloquium held in Bordeaux, France this past June. The subject matters discussed included electronic trade, transport documents, general average, transport law, place of refuge and reinsurance. No action was taken at the colloquium.

You can get information about the colloquium on the CMI website.

Also, there will be a formal CMI Plenary session in Vancouver, Canada from May 30 through June 5, 2004. Information on that can be obtained on some materials that were outside in the hall as well as the CMI website at CMI2004.org.

President Hayden reported that he and Tom Rue attended the IMO Legal Committee in London last month. Issues discussed involved salvage, wreck removal, and port of refuge.

[13754]

There is a possibility that there will be a diplomatic conference on salvage next fall. The next IMO meeting will be in London, April 19 through 23 of 2004.

As you already heard, President Hayden reported that Canadian Maritime Law Association President Sean Herrington has been made a federal judge. That means no more time sheets. Mr. Peter Cullen is the new Canadian MLA President.

Second Vice-President Liz Burrell, chair of the Special *Ad Hoc* Committee on Enhancing MLA Membership and Participation, gave a follow-up report to the Board and, has posted, on the MLA website, an interim report. The committee is still fine-tuning and analyzing the information that they gathered, but have concluded that the principal value of the MLA to its members is committee work, networking and CLE. I think we've seen a lot of that this week.

President Hayden noted that committee officers are in the real leadership roles for Association work. It takes organization, planning, and communication to enhance participation and communicate with members on what's happening in various areas of maritime law.

Board member Bobby Glenn was asked to work on practical guidelines for committee officers. And Board members were asked to work more closely with their assigned committees to increase cross-committee communication.

Director Richard Leslie reported on an ABA review of a proposed study instituted by the National Conference of Commissioners for Uniform State Laws NCCUSL. The request is to draft a standard law for marine insurance similar to the UCC law adopted by the various states.

The MLA will have to consider what position, if any, it will take on that. And we will hear more about it later on. In the past the MLA has supported uniformity of maritime law, but the focus has always been a federal one, not a state one.

Bob Parrish, Chair of the Arrangements Committee, reported on the status and events of the Fall Meeting including the herculean work of his committee in relocating the meeting here to Florida. The hurricane damage in Bermuda pretty much trashed the hotel, and brought new meaning to the ability of the MLA to bring rain. Bob gave special recognition to our

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meeting coordinators, Jerry Janove and Debra Jacobs of Resort Meetings for their efforts in quickly locating an alternative site.

The Board gives a very special thanks to Bob and his committee for their hard work.

First Vice-President Tom Rue reported on his *ad hoc* committee's review of alternative meeting locations for the Fall 2004 meeting. And Tom will be making a report on that later this morning.

Marion McDaniel, Chair of the 2005 Arrangements Committee, reported on the status of the contract with the Fairmont Princess Hotel in Scottsdale.

Administratively, we're working with a law library consortium in Hawaii in an attempt to get all of the MLA documents, from the very beginning, online. They have been making copies of our documents on microfiche for years, at no charge to the MLA. It's our understanding that they will be put on the web, without charge to the MLA, some time next year.

Mr. President, that completes my report. I move its adoption.

MR. HAYDEN: Do I hear a second?

VOICE: Second.

MR. HAYDEN: All in favor?

VOICES: Aye.

MR. HAYDEN: Hearing no opposition, it will be adopted.

I'd like to call upon our Treasurer, Pat Bonner to report to you on the profitability of the Association, and that we're not running in the red.

MR. BONNER: Thank you, Mr. President.

Currently we have about \$149,000 in the bank, which is roughly what we had last year at this time.

Our dues collection—the dues collections have been very good. We had a minor dues increase, but it has not affected our membership. Our membership stays strong.

[13756]

We should finish the year with about \$20,000 to \$25,000 in the bank. It's much less than we had when Marshall Keating was treasurer, but I'm a much freer spender than Marshall.

I think this meeting has been a success socially, professionally and I hope financially. I don't think it's going to affect our reserve. And that's what I'm trying to build up, a reserve.

And you may ask why does an organization like ours need a big reserve? Well, we need it not just for seed money for events like this, but also to cover guarantees. Often we're called upon to guarantee a certain number of rooms or a certain number of dinners. And it just happens that disasters occur. Hurricane Isabel, 9/11 or the New York City blackout can really affect the attendance at meetings such as this. And that's why we need money in the bank to cover that.

Our reserve is good but we're going to try to build it up further.

Finally, I know you've all been waiting with bated breath, but it's finally out. Our annual report of our auditors, Goldstein, Golub and Kessler, of our statement of cash receipts and disbursements. It's fascinating reading. And if you want a copy of it, just see me and I'll give you one.

Mr. President, that's my report and I move its adoption.

MR. HAYDEN: Do I hear a second?

VOICE: Second.

MR. HAYDEN: All in favor?

VOICES: Aye.

MR. HAYDEN: Hearing no opposition, it's approved.

I want to thank you, Mr. Bonner, for being a little bit looser than Mr. Keating was with the money. Marshall was really tight. And after 21 years, I believe it was, as treasurer, he said nobody could ever take away the funds that he had saved over that period. Then came Howard McCormick with the 100th anniversary and need I say more.

Next I'd like to call upon Tom Rue, our First Vice-President, to tell you about some of the changes that are being brought about, at least one of the

[13757]

changes being brought about as a result of the study that's been conducted by Second Vice-President Liz Burrell.

Tom.

MR. RUE: Thank you, Mr. President.

Pursuant to recommendation by Liz's committee, we have instigated action to hold the Fall 2004 meeting in the city of New Orleans. We do want to alert the membership that due to a number of physicians' conventions there in October and November, it appears that our likely dates will be November 11th through 14th, that is a Thursday through a Sunday. Negotiations are not yet complete with the hotel, but as soon as that has been accomplished, we will alert the membership as to the date and the hotel.

We encourage you to stay at the hotel since we will have to guarantee a certain number of rooms. And we're aggressively negotiating the room rate, which I think you'll find favorable for New Orleans.

Thank you, Mr. President.

MR. HAYDEN: Thank you, Mr. Rue.

Next report I'd like to have is from the Membership Secretary Mr. Philip Berns, our speaker of the West Coast.

MR. BERNs: Mr. President, some personal note, which is that in reference to Marshall Keating, Uriah Heep was a bigger spender. I will send him an e-mail to that effect.

Also I've noticed that there is a good feeling about this amazing change, the ability, the logistics of moving this over here to Boca Raton from Bermuda where they kept calling me from the Southampton saying that I should still keep the room, that it was a room that although before it didn't have an ocean view, it does now. So I'd recommend strongly that we stick with our plan for the next resort meeting at Hoboken, and that three weeks before we change to Tahiti. And I would be personally remiss if I did not congratulate Bob Parrish on the amazing impersonation he did last night in the costume of Elvis Presley. How he got himself to shrink to that size.... But I see Bob has just walked in.

I recommend, Bob, next time you do an impersonation of Elvis, you try to do it from the time before he died.

[13758]

Mr. President, as reported at our May 2003 Spring meeting, our total membership was 3,176.

At the October 29, 2003 Board meeting, the following actions were taken: Four associate members have been granted proctor status, Richard J. Nikas, Michael S. McDaniel, Douglas John Shoemaker, James C. Winton.

Associate members elected to associate membership, 17 lawyers: Robin R. Anderson, Zachary M. Barth, Lisa A. Corman, Edison W. Dick, Kris Elliott, Matthew L. Flick, Raymond B. Flojo, Joanne M. Foster, Douglas G. Johnson, Joseph John Gleason, Lane H. Nemirow, Alina Pagani, Kathleen Shannon Plemer, Brent Z. Skolnick, Robin C. Minturn, Cameron W. Roberts, Francis W. Turner.

Nonlawyer members elected were Paul J. Ferguson, VP, New York Regional Claim Manager of AI Marine Adjusters; Fred Robertie, CEO, President, American Hull Insurance Syndicate; and Victor Y. Goldberg, VP Ship Management, Marine Transport Corp.

We've had three members reinstated, Mitchell Ducey, Charles H. Raley, Jr., Robert Homer Walker.

I regret to announce the death of the Honorable Robert J. Ward, District Judge, Southern District New York. He had been elected as a judicial member of the MLA in 1973.

In regard to the Directory, the Directory is awaiting delivery. What we're doing is delivering the Directory with a couple of the other reports. But as of August 1, and if you had checked your website, that Directory, the printed version, has been on the website since approximately August 1st. And you would have been able to see what is in there.

I mentioned former president, Bill Dorsey has prepared, for the Directory, an excellent description of the international organizations in which the MLA participates. We always refer to them as the "acronyms". And you'll see what their purpose is, what they do, and what our relationship is to each of the organizations. And I would commend to you that you look at it, our website, as I'm always pushing, www.MLAUS.org.

I also ask that when you do get the printed Directory and, also check the website, that you check for the accuracy of your own entry. And if you notice anyone else's that seems to be inaccurate, please send me the information. I prefer it on e-mail.

[13759]

Tom Rue has asked that if I do get your e-mail address that I not send you my e-mail messages. I will try not to. But we will make the corrections. And we have been getting them on the website almost within a day or two days for correction on the website.

With the approval of the Board of the admission of 17 associates, the re-instatement of two proctor members and one associate member, the election of three nonlawyer members, the admission of four proctors all as presented above, the Association will be constituted as follows; ex-officio 12, honorary 4, judicial 149, academic 58, proctors 1534, associates 1228, nonlawyers 214, for a total membership of 3,199.

I would request that if anyone is taking a break, that they go out and get me another member so I can make it 3200.

The Board and members are again encouraged to seek new members, attorneys and non-attorneys, who would be active assets. We're not looking for numbers. We do see a certain stabilization in the number of members that we do have. And I would appreciate some aggressive approaches to getting us valued members.

I will be making calls. I've asked if any people—any members know of people who are not necessary admiralty firms, but do practice admiralty are interested in it, please send me the information.

And with that, Mr. President, that constitutes my report. And I request that it be submitted, motion and approved.

MR. HAYDEN: Do I hear second?

VOICE: Second.

MR. HAYDEN: All in favor.

VOICES: Aye.

MR. HAYDEN: I'm sure there is never opposition to what Mr. Berns says, so, therefore, it's approved.

MR. BERNS: I don't know, there was quite a delay on the seconds.

MR. HAYDEN: Let me bring before you the Arrangements Committee. I believe that most of them are here. And let me introduce them to thank them for their efforts and their great work here.

[13760]

Come on in, don't be bashful. You haven't been bashful all week. Particularly Charlie, he's not bashful.

First of all, I think you all know Forrest and Bob Parrish, who chaired the committee. Forrest, step forward. Don't stay in the back.

We have with us Mary and Marion McDaniel, deputy chair, and also the chair of the 2005 meeting.

Charlie Schmidt and Phyllis Jo Kubey. Charlie has acted as Treasurer for a long time. You thought Marshall Keating was cheap, I'll tell you, Charlie is even cheaper. Any of you who have been nibbling on the mints here, he wants 10 cents. But we thank you for being a custodian and it's what makes us in the black and not in the red for these meetings. Thank you.

We have Dennis and Janine Minichello, who run the registration and they've run it for years. And they're fantastic.

We have Larry Kahn and Dr. Kristin Larsen, who ran the CLE, and last night snuck into the party with weapons.

Now, the Wednesday night, Thursday night, and Friday night dinner receptions were run by JoAnne Zawitoski and Guy Fernandez.

Tonight's dinner, which is going to be of equal quality, is being run by Janet Marshall. She's out preparing.

MR. PARRISH: She's trying to find a table for Berns, nobody wants to sit with him.

MR. BERNS: The lack of respect here.

MR. HAYDEN: I can understand no one wanting to sit with Berns.

Pat and Pam Cooney who ran the program, thank you.

Jerry and Laura White ran the family programs and children's programs. And he didn't come to ours last night, he went with the children, and he had more fun.

[13761]

Donny and Dare Radcliff ran the fishing and the fun run. And if you look at the beautiful T-shirt they prepared, showing the steps from Bermuda to the Bahamas to Boca compliments of Hurricane Fabian, that was his idea.

I did want to comment, though, that I did not come in last in yesterday's race. I felt it my duty to follow, making sure everybody arrived here safely.

MR. BERNS: We had Larry Kahn's wife give him a physical immediately afterwards. And she's a toxicologist.

MR. HAYDEN: Well, I can tell you Thursday night was a big night.

LeRoy and Sherri Lambert ran the golf. Thank you for that.

And Glenn and Nicette Goodier ran the tennis. And I understand they had some help from Jane on the sailing, I believe.

And last but not least we have two other people, groups we want to honor. In Bermuda we had as liaison, Jim and Sharon Parker. They worked very hard to make everything perfect. And when the hurricane came through, Sharon left the island. Jim stayed with the dogs and the cat. Stayed there while all the property was damaged and our good hotel had its roof blown off. But they had worked so hard for us and regrettably they cannot be here today. We do, however, have a special thanks for them. The committee members called them on a conference call on Thursday night and we did send them a token of our appreciation. So our thanks to Jim and Sharon Parker for their hard work on behalf of our Association.

And when we moved the location to beautiful Boca, we needed help, or at least I thought we needed help. And Bob and Forrest asked Mark and Ruthie Houck to be local liaison. And they helped tremendously. We thank them all. Thank you for a great job.

If I may, I'd like to now move on to the various committee reports. I'm going to take them a little bit out of order this morning. To start off with, I'm going to ask Frank DeGiulio of the Recreational Boating Committee to give a report to us. He will present a resolution dealing with the Customs and business guests ruling with regard to pleasure yachts.

Thank you, Frank.

[13762]

FRANK DeGIULIO: Good morning, Mr. President, members, guests. I'd like to give our committee report first and then follow up with some comments on the resolution that's going to be put to the membership this morning regarding a Customs ruling.

For those of you who may not know this, Tom Russell, our committee chair, has taken a position as general counsel to the Port of Los Angeles. And, that prevented him from being with us here in Florida. We all send our regards to him and certainly missed his presence.

The Recreational Boating Committee met on Friday, October 31st, 2003, with 23 members and guests in attendance.

The committee discussed and debated a proposed resolution regarding the Customs Service business guest ruling of June 5th, 2002. The resolution was drafted by a working group appointed by the committee at the Fall 2002 meeting in New York.

The resolution was unanimously endorsed by the committee members in attendance. The committee heard short presentations from Ms. Lisa Verbitt, of Bank of America, regarding developments in large yacht financing; and from Eugene Sweeney, of the Marshall Islands Registry, regarding current issues in offshore registration of yachts.

Recent cases reported in the committee's newsletter *Boating Briefs* were discussed. I hope everyone has picked up a copy of that.

Finally, committee member Mark Buhler, of Orlando, brought to the committee's attention the Coast Guard's proposed notice of rule-making in which the Coast Guard is seeking comments on a proposal to extend the automatic vessel identification system requirements, now applicable to commercial vessels, to recreational boats. The cost of installing the necessary equipment is said to be \$10,000 per vessel. The comment period on the proposed notice of rule-making is open until January 5th, 2004.

And that concludes the report of our committee meeting.

I'd now like to turn to a draft 0026 resolution on the Customs business guest ruling. There were copies in the back as well as a copy of the actual Customs ruling, which was issued in June 2002. This particular ruling is a letter ruling. It was published in the Customs Bulletin, but was not published in the Federal Register. And, in fact, as far as we're aware, no

[13763]

member of the Association became aware of the proposal until the letter was actually issued in June 2002.

The effect of this letter ruling is to change Customs' interpretation of who constitutes a passenger for the purposes of the Coast-wise Trading Laws.

Essentially, there's a 50-year history in which Customs has interpreted the definition of passenger to exclude nonfare-paying guests, including business guests of boat owners.

This letter ruling changes that interpretation, rescinds all prior letter rulings and, in effect, says that any guest aboard any vessel transporting passengers, or operating between ports of the United States within the meaning of the Passenger Vessel Services Act, which is the counterpart to the Jones Act for cargo, any business guest on any boat essentially constitutes a violation of the Coast-wise Laws, unless that boat is documented with a Coast-wise endorsement.

We think that Customs certainly was looking at foreign vessels not documented in the United States that do, in fact, transport business guests within U.S. waters. But we think that Customs has not fully recognized the ramifications of this ruling to the extent it will apply to any recreational vessel that is not U.S. built, U.S. owned or U.S. documented. So it will apply to recreational boating owners whose vessels are, for example, titled in a state rather than documented with the Coast Guard, or are built foreign and documented or titled, in a state.

So this resolution simply asks the Association to endorse a working group that's been established to take action in the form of applying to Customs for reconsideration of this letter ruling.

I'd like to stress that the resolution has been placed before and approved unanimously by Marine Financing, Coast Guard, Maritime Legislation and the Recreational Boating Committees.

Mr. President, I'd be happy to take questions, but I'd like to put the resolution before the membership for approval.

MR. HAYDEN: All right. Let's put the resolution before the membership and then if there's any discussion.

[13764]

VOICE: I move for the adoption of the resolution. And it needs to be read, I'm sure.

MR. HAYDEN: Would you like to read the resolution first?

FRANK DeGIULIO:

It appearing to the Maritime Law Association of the United States that at the Spring 2003 meetings of the Association several committees and subcommittees, including those on Maritime Legislation, Marine Financing, Yacht Financing, Coast Guard Documentation, U.S. Citizenship and related matters, and Recreational Boating, all discussed with great concern a Customs ruling issued May 17th, 2002, and published on June 5th, 2002, in which Customs changed its long-standing interpretation of who is a passenger for purposes of 46 USC § 289. That a study group appointed by the Recreational Boating Committee has researched issues presented by the Customs ruling, in particular, whether section 289 was intended to apply to persons other than passengers for hire. And that the study group concluded that Customs' new interpretation has not correctly reflected the intent of Congress insofar as section 289 is now being applied to the carriage of persons who do not pay a fare for their transportation such as clients and business guests entertained on recreational vessels in the hope of good will or future patronage with respect to a business or hobby of the vessel owner, but is unrelated to the business of transporting passengers.

In consideration of the foregoing, be it resolved that the Maritime Law Association of the United States authorizes the presentation to the Bureau of Customs and Border Protection of the results of the study group's research and requests the agency to reconsider its interpretation of who is a passenger for purposes of 46 USC, section 289.

MR. HAYDEN: Is there any discussion? Anybody have any questions?

Barbara, we'll entertain your motion.

[13765]

VOICE: I move adoption of the resolution.

MR. HAYDEN: Do I have a second?

VOICES: Second.

MR. HAYDEN: All in favor?

VOICES: Aye.

MR. HAYDEN: Any opposition?

Resolution is passed.

I'll now call upon Bob Connor, Chairman of the Carriage of Goods Committee for his report.

And in the wings, following Bob Connor, will be Christopher Davis, Chairman of the Maritime International Committee.

When you come up, please give the court reporter a copy of your business card in order that she at least spells your name properly.

WILLIAM CONNOR: Good morning, Mr. President, members.

We had a committee meeting, and basically on Thursday afternoon we got an update from our three delegates who serve as advisors to the U.S. Delegation to UNCITRAL. I won't go into a lot of detail, because looking at the number of the people in the room, half of you were at the committee meeting.

But basically the U.S. issued a position paper some time in July, I believe it was, or early August, which was the result of a lot of give and take among the various parts of the delegation. The committee, the full U.S. delegation and the United Nations groups met in Vienna earlier this month to work on parts of the legislation. They have not reached probably the most important point to all of us, i.e., the *Sky Reefer* area. That will come up in the Spring, in New York.

The U.S. position paper was a bit of a disappointment to us as members of the MLA, because it does water down what we thought was very important about the place where we could bring suits.

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As you recall, we discussed and worked into our subsequent proposals that we would follow something similar to the Hamburg rules. What is now the official U.S. position is that place of receipt or place of loading, place of discharge or place of delivery, but the third one is the catch and that is the principal place of business of the defendant vessel owner.

This becomes important when you have a service contract, because under service contracts, you can negotiate a jurisdiction clause. And under the proposal, the service contract may, if it has notice, say third parties, holders of bills of lading, will be subject to that jurisdiction clause.

It's nowhere near decided. According to the schedule we've heard, probably the earliest we will hear anything back from the United Nations will be some time in 2005. There's a lot of negotiation to go on. As you know, the rest of the world really doesn't care that much about service contracts, but the World Shipping Council and NIT League were very emphatic that they wanted service contracts and jurisdiction clauses to control litigation where it has been negotiated. That's about where things stand.

It's still very fluid. If you talk to Chet, George, Vince, who are members, or Mike Sterley, who is part of the UN Delegation, they can give you a much better update and more details. But we are moving forward. We'll see what happens over the next few months. Again, I think it's in April; the next set of meetings in New York.

And that concludes my report Mr. President.

MR. HAYDEN: Thank you, we appreciate it very much.

Christopher Davis. And he will be followed by David Farrell.

CHRISTOPHER DAVIS: The CMI Committee hosted a Dutch treat luncheon on Thursday, October 30th. It was well attended and included informative and provocative presentations by two distinguished speakers. Peter Cullen, President of the Canadian MLA, spoke on the new CMI project on criminal offenses committed on foreign flag ships.

That was followed by Paul Hinton, Chief Executive Director of A. Bilbrough & Co., Ltd., who spoke on the growing problem of the criminalization of ship's crews and salvors.

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As Warren mentioned, the CMI will hold its 38th International Conference and Plenary in Vancouver, Monday, May 31st, through Friday, June 4th. The venue is the Westin Bayshore Resort and Marina, which is adjacent to both the Vancouver Aquarium and Stanley Park.

The conference, the details of which are available on the web at www.CMI2004.org, promises to be a memorable event. Six subjects will be covered. They're evenly split between issues of private and public law. The private law issues will be transport law, general average and marine insurance. The three public law issues are places of refuge for ships in distress, pollution of the marine environment, which will include the proposed revisions to the CLC and Fund Conventions and, finally, criminal acts on the high seas.

Our friends at the Canadian Maritime Law Association have spared no effort in organizing and arranging an excellent social program both during and after the conference.

One important footnote for those of you attending, CLE credits will be available for the conference, and Michael Marks Cohen has kindly agreed to coordinate the details for insuring proper CLE accreditation.

Finally, we expect the conference to be well attended, particularly by delegates or member organizations from the Far East. So I would urge you to register early, specifically before January 5, 2004, if you want to get the full early registration discount.

Please advise either me or our committee vice-chair, Alan Van Praag, if you plan to attend, so that we can get a handle on the size of the U.S. MLA contingent that will be attending.

Mr. President, that concludes our report, thank you.

MR. HAYDEN: Thank you.

David Farrell.

DAVID FARRELL: Thank you, Mr. President.

The Fisheries Committee met yesterday. We reviewed recent cases and trends throughout the country. We also looked at the Maritime Transporta-

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tion Security Act of 2002, and the Coast Guard's implementation of it, which might require that fishing vessels carry automatic identification black boxes if they plan on transiting vessel traffic systems.

The bulk of our productive discussion, though, was on a topic that I have reported about before, and that is the application of maritime liens to federal fishery permits issued by the National Marine Fisheries Service.

I'm not sure the membership understands the great importance of the fishing industry to United States maritime commerce. In the last 15 years, the Bering Sea, which is the most productive fishing grounds in the world, has been Americanized and there has been tremendous investment there.

There are dozens of 200, 300 and 400-foot factory processor ships plying the Bering Sea, employing thousands of onboard workers, not to mention the shoreside support and vessel construction that's going on for that fishery. There is a huge amount of fish being caught and tremendous revenue being generated in the Pacific Northwest.

There are promising prospects in other areas of the country as well. In New Bedford, Massachusetts, for instance, there's been a rejuvenation of the scallop industry through some wise management conservation, which is nothing more than crop rotation. But this is a radical development for the fishing industry, which is really driven by a cowboy mentality.

Most of the fisheries in the United States are closed entry with no new fishing permits issued. As a result, permits have skyrocketed in value such that they're more valuable than the vessels themselves. Consequently, fishermen need to be able to obtain credit based on their permits and financiers need to be confident in the manner in which they secure their interest.

The problem is that there are three competing regimes for obtaining security interests in fishing permits. Traditionally, it was done under state UCC law by treating fishing permits as general intangibles.

But in 1996 Congress passed a statute requiring the National Marine Fisheries Service to run a central lien registry where all claims against permits be monitored out of the permit office.

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Then in 2001 the First Circuit case *Gowen v. QUALITY ONE*, 244 F. 3d 64, 2001 A.M.C. 1478, 1st Cir. (Me.), which I've spoken about before, held that fishing permits are appurtenances of vessels, therefore maritime liens can attach to them, and, perfecting security interests in those permits would be by filing with the Coast Guard.

Steve Johnson, of Seattle, our Vice-Chair, has put together a cogent statutory amendment to the Magnuson-Stevens Fishery Conservation and Management Act, which in essence goes back to treating permits as general intangibles and deletes the 1996 Congressional statute.

We're going to be circulating that draft to fishing industry members, to financing groups, and we want to coordinate with the Marine Financing Committee and Stevedoring Committee and other people in the MLA. We've already been in touch with Congressional staffers.

I was buoyed yesterday by a development—I don't want to put words in his mouth — but Phil Berns seemed to be coming onboard, too. Perhaps with that kind of progress, I'll be able to report to you favorably about developments at our May meeting in New York.

Thank you very much.

MR. HAYDEN: I'd be careful with Phil Berns, he speaks with forked tongue.

I might add that at the Board meeting in Seattle in August, under the auspices of Jim Whitehead and Bruce King, we had a wonderful presentation to the Board and the local membership on fishing regulation, fishing rights and also on the fishing permits.

And it was very, very enlightening to those, who I think are many of us, who do not practice in that area of the law.

Larry.

MR. BERNES: I just have to quick comment that I requested that the committee get in touch with the National Marine Fisheries to get them on board.

And also a quick comment and retort. The one advantage of a split personality, Mr. President, is you're never alone.

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LAWRENCE BRENNAN: Thank you, Mr. President.

The International Law of the Sea Committee had a stealthy meeting yesterday afternoon. We are pleased to report, however, that after 22 years, the Senate Foreign Relations Committee has finally held two days of hearings on the treaty. In the hearings on the treaty, 13 witnesses testified, 11 government officials, a number of senators, a number of members of different cabinet agencies, and two private witnesses testified, all in favor of the treaty.

There are, however, some minor issues with respect to military activities and the resolution of international disputes concerning the definition of military as opposed to military scientific activities. That suggests the possibility of a slight reservation on behalf of the U.S. Government. The chairman of the Senate Foreign Relations Committee, Senator Lugar, has promised swift action and expects to submit the treaty to the full Senate in early 2004.

The other half of our mandate is to deal with offshore activity. Vice-Chairman Chuck Lane is happy and pleased to transmit to all members of the MLA routinely, data that he obtains in his profession concerning the use of offshore oil rigs, oil development and matters like that. Chuck has posted his e-mail address outside the door. Please feel free to contact him directly.

Moreover, we've noted a trend, a somewhat disturbing trend, with regard to National Energy Policy that indicates a lack of growth and, in fact, a shrinking of the number of rigs in operation in the U.S. Gulf. And the movement of those assets overseas to two areas in particular. Two areas with some political and economic instability, Africa and Russia. And we're watching that trend closely.

Subject to the earlier resolutions of this organization, if the membership and the Board and President wishes, we are prepared to assist in drafting correspondence on behalf of the President to the Senate Foreign Relations Committee in support of the UN Law of the Sea Convention.

With that I have no further comments.

MR. HAYDEN: Thank you.

Next will be Matt Marion, Marine Ecology. Matt will be followed by Sandra Knapp of Marine Financing.

[13771]

MATTHEW MARION: Thank you, President Hayden and good morning.

The Marine Ecology Committee met this past Thursday. We received reports on current developments in Washington as well as recent criminal environmental proceedings and civil proceedings stemming from recent oil spills. The most noteworthy development in Washington involves the Coast Guard Authorization Act of 2003, which includes a provision exempting secured lenders from liability resulting from oil spills if those lenders are not "participants of the management of a vessel."

This liability provision is modeled after a similar provision in CERCLA, the so-called Superfund law. We understand the Senate is also examining the exemption language in the version of the bill currently before them. We will report back on this legislation in the Spring of '04, as we expect this provision to pass in some form.

Marine criminal proceedings resulting from oil spills have continued to increase. There's been a noticeable increase in the magnitude in criminal pollution fines, in the length of individual jail sentences and also in the terms of probation, which now typically include elaborate compliance programs and continuing supervision of those programs by federal officials after the completion of sentencing.

There's been a significant development also in the Department of Justice's charging and sentencing policy for criminal cases. The new policy will limit the discretion of prosecutors to settle serious pollution cases by tying that discretion to the factors identified in the federal sentencing guidelines. The policy will also limit the right of prosecutors to dismiss indictments by requiring pre-approval of such dismissals by the assistant attorney general, the U.S. attorney or other significant prosecutorial supervisors.

On the civil litigation side, there have been consent decrees filed in the STAR EVIVA and NEW CARISSA. We also note that the government's claim against the owners of the NEW CARISSA will proceed to trial in March of 2004. We expect to report to the membership on that trial, possibly as early as the Spring 2004 meeting.

Lastly, we received a report on current marine environmental developments in Australia from the committee guest Derek Luxford of Sydney, Australia. Derek has been kind enough to report at the last three MLA

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meetings held outside New York. We appreciate his continued contribution to the committee and look forward to seeing him again in Arizona in two years.

MR. HAYDEN: Thank you, Matt.

Sandra Knapp.

SANDRA KNAPP: Good morning, Mr. President, members and guests.

We had a CLE presentation for an hour and I just want to make my personal compliments to the Board and to the Arrangements Committee for encouraging us to do CLE presentations.

Steve Johnson and Bruce King, both of Seattle, gave us an update on financing in the fishing industry, which, as you've already heard, is in flux and an update on other current and legislative developments.

We did not have our usual subcommittee meetings, but we briefly discussed the status of some of our projects. And in particular, we are all anxiously awaiting the regulations from the Coast Guard on the foreign leasing company provision. There's been a lot of controversy over the proposed regulations. You can check out the docket on their website at www.uscg.mil to see some of the comments that have been filed.

Having already had a lot of discussion in our prior meetings on the Customs ruling, we unanimously endorsed, as already reported by Frank, the resolution that we passed this morning.

The cases we discussed revolved around the fishing permits, as discussed by Dave, and also some other priority cases in the maritime lien area.

Victor Cook reported to us on a new title insurance product that deals with vessel construction. Can't wait to see the wording on that, which should be coming forth.

We're going to start some new projects with the assistance of the Young Lawyers Committee.

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

MR. HAYDEN: Thank you, Sandy.

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Stephen Rible.

STEPHEN RIBLE: Good morning, Mr. President. I too have to thank the Arrangements Committee. As I came in here preparing for my committee, my room had about five chairs. Magically, they turned it into a 50-chair meeting in no time. And we even filled all the chairs.

We actually had a great week here in Boca. We had the good fortune of working with Phil Cornick, who is a Claims Director at Brit Syndicates in Lloyd's. His lecture addressed "Innovations at Lloyd's."

Of course, he spoke at the Main Meeting of the Association. So we seized him, *in rem* and *in personam*, and brought him over to our Committee Meeting. We had a "Point Counterpoint" discussion. Mr. Cornick provided the "point", of course. And we had the good fortune also of having Jean Knudsen, Director of Claims at CNA, provide the "Counterpoint". The topic was "Warranties in Hull Cover".

The common thread of their discussions was that the global hull market, once again, is a soft market. It appears that brokers are dictating terms and underwriters are attempting to issue a more marketable product to sell to vessel owners.

London has issued new wordings, entitled the International Hull Clauses. There are quite a few changes, but one of the changes is the removal of certain warranty language. They've replaced these warranties with terms and conditions that read as exclusions from or limits on coverage. They're hoping that this makes for a more marketable product for the vessel owners. Unfortunately, to date, it has not been a marketable product. Most hull insurance is being written on Norwegian Terms and also on the 1977 American Institute Hull Clauses.

I'd also ask that you pick up a copy of our newsletter. It has a lead article written by Jonathan Spencer. The article is intended to incite controversy and stir debate, which is not easy when we discuss the York-Antwerp Rules. This is going to become important, however, as it will be presented in Vancouver at the CMI. We ask that you read the article and consider the positions stated therein. We believe that the marine insurance community, particularly Hull, P&I and Cargo underwriters, should think deeply into this issue before the CMI conference.

Thank you very much.

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MR. HAYDEN: Thank you, Steve. I might mention that the IUMI is arranging to sponsor a debate or a presentation, at least, on the York-Antwerp Rules in January. They've invited the various interested parties, average adjusters, the hull side, the cargo side, the brokers and us to participate. They have advised me that they will also invite to participate the people from IUMI who have been promoting the changes in the York-Antwerp Rules.

I think that it is important that everybody understand everybody else's position before anybody is asked to take a position. I find in my travels on behalf of our Association that if you go to London, the hull market doesn't seem to understand what's going on. You go to New York and the cargo market doesn't seem to understand what's going on. Why? Because they haven't been consulted. Maybe they haven't taken any interest. But you'll be damn certain that in the end when it comes up to a vote in Vancouver that suddenly everybody will come out of the woodwork, whether they know what they're talking about or not.

So what we're trying to do is avoid that and see that everybody has the full understanding of what changes are proposed, and whether you consider them good or bad, depending on which side you're looking at it from.

Next we have Don Kennedy. And Don will be followed by John Schaffer.

DONALD KENNEDY: Thank you, Mr. President.

We had a mediation panel discussion at our meeting on Thursday. Bobby Glenn was the moderator, Dick Corwin participated, Pat Cooney participated and Craig Kartiganger from the Florida Mediation Group participated.

In addition to that, the committee is following, with interest, the draft instrument and the issue that we've articulated before about private carriage. We intend to prepare something in writing, perhaps that could be useful at the freedom of contract session, which we've got coming in London.

And, finally, the committee has posted its agenda on the website and will continue that practice for the reasonably foreseeable future.

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That concludes my oral report. And we will submit a written report. Thank you.

MR. HAYDEN: Thank you very much.

John Schaffer, who will be followed by Dennis Bryant.

JOHN SCHAFFER: Good morning, everyone.

The Maritime Personnel Committee met yesterday afternoon. We are pleased to report that we had 20 members and guests that participated in a lively conference.

We talked about the IMO, ILO *ad hoc* expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers. We also discussed the U.S. government's project to revise and codify Title 46 of the U.S. Code. In addition to monitoring asbestos and other proposed legislation, we also continue to keep our eyes on the area of the law of punitive damages, which has been addressed recently by the United States Supreme Court.

We also talked over the process of tort reform in general, which is obviously becoming a big issue in the United States.

The Personnel Committee furthermore discussed and reviewed several significant decisions from all around the United States including some Supreme Court cases that talk about issues involving vessel owners, employers and claimants.

We welcome suggestions from the Association for new and interesting projects. We're always looking for additional members and significant decisions.

Thank you very much. That concludes my report.

MR. HAYDEN: Thank you, John.

Dennis, Navigation Coast Guard.

Dennis will be followed by Bob Zapf.

DENNIS BRYANT: Our committee met on Thursday, the 30th. We were honored to have Admiral John Crowley, the chief counsel of the Coast

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Guard with us, along with Captain Joseph Ahern and Lieutenant Rodriguez. Unfortunately, the Admiral and the Captain had to go back to Washington. Lieutenant Rodriguez is here to monitor our activities and my report.

The Coast Guard provided us with an update on IMO activities. Pat Wiese was supposed to be here from the Maritime Administration. The Department of Transportation is working under a continuing resolution, and his travel was cancelled at the last moment.

Amy Larson, from the Federal Maritime Commission, spoke on current activities at that agency.

Larry Kern updated us on maritime legislation, mostly the Coast Guard Authorization Act, which is pending in Congress.

We discussed the recently revised memorandum of understanding between the Coast Guard and the NTSB. The significant factor is that the NTSB is much more now in control of which marine casualty investigations they take charge of. So we can expect to see more and more marine casualty investigations headed by the NTSB.

Now, the Staten Island Ferry casualty would have been headed by them regardless, even under the old MOU. But the investigation of casualty on the SS NORWAY is an example of a case that the Coast Guard under the old rules would have been in charge of, under the new rules, the NTSB is taking charge of it. Frank Wiswall talked about recent changes to COLREGS and his concern that one change in particular was not well thought through.

The Coast Guard finalized its new definition of territorial sea and other jurisdictional definitions.

The ballast management program. We are going to see in the very near future mandatory ballast management programs and reporting in this country. Coast Guard regulations should be out shortly. That will give us three basic systems. We've got a number of states with their own programs right now. We will then have the federal system, and I imagine in the future we will have an international system.

Electronic filing of cargo reports is going to be mandated very shortly, both for inbound cargo and for outbound cargo. We've got the 24-hour rule now for inbound cargo in most cases. Those reports can still be filed

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manually. That will soon change to mandatory electronic reporting. And then that will very quickly expand to the same sort of reporting for out-bound cargo.

Crew member visas for foreign mariners. The Federal Government is maintaining a very hard line. And it does not look like, even for those crew members who have the new upcoming ILO seafarer identification cards, that they will be exempt from the U.S. visa requirements.

Finally, we talked about maritime security. We're all generally familiar with the Coast Guard regulations which were issued in interim form on the 1st of July, and in final form on the 22nd of October.

Some of you may not be aware that there is an ongoing dispute between Congress and the Coast Guard over whether foreign flag vessels, that are subject to SOLAS, have to submit security plans to the Coast Guard.

The Coast Guard has taken the position that they do not, that all that is required, is that they have an approved security plan that's in accordance with the ISPS Code, and has been approved by their flag administration, or on behalf of their flag administration and that they carry an international ship security certificate.

Congress, on the other hand, is concerned that—they don't think that all foreign governments will thoroughly review security plans. And they want all security plans for all ships in the United States to be reviewed by the U.S. Coast Guard.

Of course, on the other hand, they don't want to give the Coast Guard the money to do that, but that's another story.

There have been two hearings on Capitol Hill. Both times the Coast Guard subcommittee criticized the Coast Guard for its position. Most recently the Coast Guard Authorization Act, which has either been voted on in the House yesterday, or will be voted on very shortly in the House, still a little bit unclear to me, has a provision in it which will apparently, haven't seen the actual text, but apparently will clearly mandate that the Coast Guard review and approve foreign vessel security plans.

The international ship owning and operating community, who in many cases are our clients, are unaware of this. They have been led to believe by the U.S. Coast Guard, and others, that they don't have to submit security

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plans to the Coast Guard. Congress feels otherwise. We haven't seen the exact language they're using.

Obviously, it's not been adopted by the Senate yet, it's not law, but we can see where we're moving. Some feel that the current statute is sufficiently clear, that those plans have to be submitted. Coast Guard felt otherwise.

Congress apparently is of the mind to make their position abundantly clear to all concerned, including the Coast Guard. Just be aware that this is a hot area, deadlines are going to be very short. Stand by.

For those that subscribe to my newsletter, I'll put something out as soon as possible. But this is a major development and we need to pay attention to it.

And that ends my report. Thank you.

MR. HAYDEN: Thank you, Dennis.

Bob Zapf, to be followed by Larry Kahn, the Young Lawyers.

ROBERT ZAPF: Good morning, ladies and gentleman.

The Practice and Procedure Committee had a meeting on Wednesday. There are five subjects I wish to advise you of as to current activity and interest.

The first is in respect to a topic we have discussed before, and that concerns the notice requirements of an arrest action under 46 USC § 31325 (D).

The committee has prepared a report. They had intended to have it circulated to the membership at large as well as to other interested committees for comment prior to this meeting, but because of the change of venue, and because of the delay in the publication of the report and other matters that were going to be circulated, we did not get that report out.

It will be on the website. And it will be circulated particularly to the chairs of the Stevedores Committee, Marine Finance Committee, COGSA, Recreational Boating and Marine Insurance and General Average Committee for comments.

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Again, this deals with the issue of who must be given notice of an arrest action if a vessel is not released within 10 days, and how that notice is to be given.

The committee has prepared a draft amendment to the statute which is part of the report. We are going to be circulating that, as I said, for comment.

Although the report that's published, or will be published, asked for comments by October 1st, obviously, with the delay of the publication, we're now looking for comments by February 1st. We can then take those comments into account in preparing a report and recommendation, and probably a resolution for action at the next general meeting in May.

The second area to advise you of is that the changes to Rule C and Rule B that had been adopted at the last General Meeting as a position of the Association, deal with the issues of when a defendant is not found in the district for purposes of an attachment proceeding, and the issue of when a claim of interest must be filed. Those changes have now been published for public comment by the Advisory Committee. The comment period expires on February 16th of 2004.

Again, these are changes verbatim that the Association has adopted, and those are likely to be approved in the absence of any opposition from the general public. We anticipate there would be none from the MLA considering that we have adopted these at our last meeting.

The next area of information is that a new draft of the proposed Rule G concerning forfeiture proceedings has come out from the Department of Justice. It's going to be considered by the Advisory Committee, at the April meeting of the Advisory Committee.

The mandate from the Association at our last meeting, actually in May of 2002 we adopted a resolution, was that the MLA would not take a position with respect to the particular wording of the drafts. There was one issue, though, on which the Association adopted a resolution at the May meeting. There should be a complete dichotomy between the forfeiture rules and the other admiralty rules.

The first provision of the most recent draft, as other drafts have, includes an incorporating clause saying that to the extent not covered by Rule G, the general admiralty rules would apply. There's similar language

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in the most recent draft. We, as a committee, will be asking the President to write to the Advisory Committee simply reminding the Advisory Committee of the MLA's position, that we would prefer to have a complete dichotomy between forfeiture and admiralty rules. And we will prepare a letter for the President's consideration as the type of a letter we'd like to see the Advisory Committee receive.

Alan Van Praag reported to us on a recent development on the recognition and enforcement of judgments. There are currently 39 state statutes that exist providing for enforcement of money judgments. There has been now a suggestion by the State Department that the ALI prepare a federal statute on enforcement of judgments so that there would be a uniformity of procedures in that area.

That is an area that we will be monitoring as part of the Practice and Procedure Committee and Federal Rules and Statutes subcommittee to see what the ALI comes up with in that context.

And then finally, the Advisory Committee has circulated, or will be circulating to various law associations, a request for advice and information on electronic discovery, as to whether there are any areas of the current federal rules that ought to be amended to take into account the specific problems concerning electronic discovery. That consists of how long materials are maintained, in what form, whether they have to be produced, and who is going to pay for the production.

There was a recent decision in the Southern District of New York, and I'm not going to try to pronounce the name, but the defendant was USB Warburg, that came up not in a maritime context, but rather in an employment context. The big issue there was the cost of approximately \$175,000 simply to retrieve the electronic information that the plaintiff had requested. They did not take into account the time of management to prepare and preserve these materials and present them, nor for attorney costs in reviewing materials for privilege issues. This decision went through a seven-step analysis as to what should be preserved, how it should be preserved, how it should be produced, and who is going to pay for it.

The Advisory Committee on the Civil Rules will be asking bar associations if they have a view on the changes that the federal rules might require. The Committee on Practice and Procedure decided that there was nothing peculiarly maritime about this step that required our specific atten-

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tion, but we wanted to alert the general membership that this is an area that may be changed in the future.

And if others have any thoughts that the committee ought to take up, we'd welcome those.

And that concludes my comments.

MR. HAYDEN: Thank you very much.

Larry Kahn, Young Lawyers Committee.

LAWRENCE KAHN: Before I report on our committee meeting, I'd like to take this opportunity to thank the young lawyer presenters from Thursday's CLE program: Mike Eaves, of Beaumont, Barbara Ristow, of Chicago and Mark Marling, of Savannah. They researched a difficult and fast-breaking topic, SARS, and applied it to the law of quarantine. It was a difficult research project and I think they did an excellent job.

And with that, I hope that the young lawyers will be invited back to present a CLE program again at the next resort meeting.

I'd like to report now on our meeting itself. We discussed a number of ongoing projects, including the indexing project that was begun by Immediate Past President Dorsey. That's progressing and we are making forward progress on that. The progress is slowed somewhat by the lack of some materials, but we are working on collecting those materials.

We received a joint project, or joint request, I should say, to conduct a state-by-state analysis of CLE requirements. The request came from the Special Committee, and also from the CLE Committee to conduct this analysis.

We are almost complete with that project. We only need to obtain details on six more U.S. jurisdictions, and we expect to have that completed very shortly and to be able to report to those committees on our findings.

We are continuing work on the liaison project. For those of you who don't know, it was a project begun a number of years ago as an effort to have young lawyers placed with each of the substantive committees so that

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the liaisons could report back to the Young Lawyers Committee as to the goings-on of those substantive committees, and also to act as a point of reference for the chairs of the substantive committees to present them with a young lawyer's face, someone who will be a contact for that committee with the Young Lawyers Committee.

We expect to have the liaison project in full swing by the next meeting in the Spring. And, meanwhile, I encourage the committee chairs if they have any new projects to present them to any of the officers of the Young Lawyers Committee.

We had an active meeting yesterday afternoon. And we were very glad to have Vice-President Rue in attendance, and we were appreciative of his comments and insight. We discussed a number of ways to make the Young Lawyers Committee more responsive to the needs of its members.

We agreed that an effort was needed to be made by the Young Lawyer's Committee officers to do the following:

One, to hold our meeting much earlier in the meeting week so that the young lawyers would be better acquainted with each other before attending the other committee meetings.

Two, provide speakers for more of our meetings.

Three, provide opportunities to address the members through CLE programs and/or have opportunities to publish papers through MLA-sponsored projects.

Four, to establish Young Lawyers Committee reporters in each of the federal circuits to help the committee members in each circuit stay current on recent developments and new case law.

On behalf of our Vice-Chair Katherine Newman of New York and our Secretary, Dana Henderson, of Seattle, we will make every effort to respond to these requests.

President Hayden, that concludes my report.

MR. HAYDEN: Larry, thank you very much. And I want to assure you that the young lawyers will be invited back at all times. They're a vital part of our Association. And we do appreciate the work they all put in.

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Next I'd like to call upon Liz Burrell to say a few words about the special committee she's been heading up on behalf of the Association, the studies.

MS. BURRELL: Most of the information that we have gathered and analyzed so far is available on our website.

As you heard from Warren, we have made an extensive information-gathering effort. We have engaged in extensive analysis of that information. As you've heard from Tom, where we have been able to, we've already started making specific recommendations about how this Association can be more responsive to its members and continue to enjoy the values and benefits that so many of us have enjoyed in the past and indeed have brought us here today.

As you also heard from Larry just now, we are continuing our information-gathering efforts on all aspects of Association activities, functions and focus.

If you have suggestions, we want to hear them. Feel free to let me or other special committee members know what you think about any aspect of the Association's activities, values or projects.

As part of our examination, we're going to try to gather some information about this meeting. To that end, we will e-mail brief questionnaires asking those who attended what they did and did not like about this meeting, and asking those who didn't attend why they decided not to come.

I ask for your cooperation in returning those questionnaires so we can continue to craft solutions to problems that exist while continuing to maintain the values that have characterized this Association from its inception.

Thank you very much.

MR. HAYDEN: Thank you. I think you've noticed at this meeting some of the changes that have taken place, more CLE, having our meeting a shorter period during the work week, and having our limited athletic events before the meeting officially opens for those who want to participate, they have to come early. Members who do not want to participate do not have to be here for that. And all of those changes are the result of the studies and the thoughts that have been presented to the Directors and the Officers of your Association by the members. And our change of the meeting location in the Fall 2004 is an attempt to satisfy the members' suggestion that we try other things.

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We're here to do what the membership wants—well almost. Sometimes we question the wisdom of the suggestions. But we are here to make the membership happy, not to reject suggested changes.

And I think that we've had very, very good results in the changes that have been enacted so far.

Lastly, before we entertain closing motions, etcetera, I'd like to call upon Marion McDaniel, who is chairman of a very special committee. Marion is not gutsy like Bob Parrish, he hasn't come decked in a Scottsdale outfit like Parrish came in our last meeting in Bermuda shorts. But I can assure you that Marion will do a fine job and represent the Association in all negotiations in putting forward a great meeting in Scottsdale, Arizona.

MARION MCDANIEL: Thank you, Mr. President.

We are heading for another wonderful meeting. Mr. Parrish is back there laughing knowing that he has now passed the baton to me and he's raising his hand in victory.

Seriously, we look forward to a very, very wonderful meeting at that time in a wonderful venue. For those of you who don't know, we will be at the Fairmont Princess, not in Bermuda, but in Scottsdale. We will follow the same format or be close to it. It will commence on Wednesday, which is November the 2nd. In other words, we're going to miss Halloween next time. The Monday of that week is October the 31st, and the Saturday is November the 5th. So that will give you a framework.

The committee is being formed at present. We have scouts going out as early as January to continue reconnoitering. The full committee, I anticipate, will go out to visit the venue and do our usual due diligence some time in October, and we will be in a position to report more fully to the assembled body at our meeting in New Orleans.

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

MR. HAYDEN: Thank you. I'm sure it will be an excellent meeting.

Before I call upon our senior officer present here on behalf of the Board of Directors and the Officers here and personally I want to thank everybody for being here, thank you for your participation, thank you for your participation in the committees. Committees are the life blood of our

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Association. The work done in the committees is an important part of the Association. Thank you.

Now, if I might call upon Mr. Lord, the senior officer present.

VOICE: Mr. President, I move that the 2003 Fall Business Meeting of our Association be adjourned.

MR. HAYDEN: Do I hear a second?

VOICE: Second.

MR. HAYDEN: All in favor.

VOICES: Aye.

MR. HAYDEN: Thank you, Mr. Lord.

We look forward to seeing everyone tonight at our closing dinner.

FORMAL REPORT OF THE CARRIAGE OF GOODS COMMITTEE

The committee met on Thursday afternoon at the Boca Raton Hotel & Resort. About 55 people attended the meeting. One hour of CLE credit was given for this session.

George Chandler, Chester Hooper and Vincent DeOrchis, who are part of the United States Delegation to UNCITRAL, gave the members of the committee an update on the progress made at the Vienna conference earlier this month. The draft treaty is still far from complete. As each section is discussed many of the delegations from the various countries put forth their nations interests. As an example, the European countries want the inland transit rules (CMR or CIM-COTIF) to apply even on multi-modal shipments when the damage occurs during the European trucking or rail portion. These countries will not agree to have the treaty, as enacted, control that portion of the transportation when seeking a recovery from the performing railroad or trucker, including the contracting NVOCC. There are many different proposals before the working group concerning pre-ocean carriage as well as post-ocean carriage liability as to the various perform-

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ing carriers. As in any political debate, it is still too early to determine what the final document will contain.

The working group of UNCITRAL will meet in NYC in May 2004. Mary Helen Carlson, the head of the US Delegation, will attend our committee meeting on May 5th to give us a further update, and has asked for additional feedback from our members. The U.S. Delegation is under pressure to get consensus among the various U.S. interest groups. The State Department does not want to be part of a long-term treaty negotiation for the carriage of goods, and then not have our Senate ratify the treaty.

Respectfully submitted,

William R. Connor III, Chair

**FORMAL REPORT OF
THE MARINE FINANCING COMMITTEE**

Mr. President, Members and Guests. The Marine Finance Committee held its meeting on October 30, 2003 for an hour and a half which included one hour of CLE credits. Steven B. Johnson of Seattle, Washington presented the paper entitled "Financing the Fishing Industry" and Bruce King, also of Seattle, Washington presented a paper entitled "Current Legislative Developments in Marine Financing". Our Committee would like to compliment the Board and the Arrangements Committee for doing such a great job encouraging and putting forth the CLE programs.

Although we did not hold separate sub-committee meetings, as we normally do, we briefly went through sub-committee reports. With respect to the Joint Subcommittee that we have with the Practice and Procedure Committee, we are still awaiting a Board decision on whether we can rename it the Joint Subcommittee on Maritime Liens instead of the "Joint Subcommittee on Vessel Foreclosures and Insolvency." There are several maritime lien cases that were decided recently. They were presented by Mr. King in his CLE presentation.

There was no Taxation Subcommittee report.

The U.S. Coast Guard Documentation Subcommittee continues to anxiously wait for the foreign leasing company regulations to be issued by the U.S. Coast Guard.

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The Yacht Finance Subcommittee presented a resolution regarding the Customs ruling on passengers for hire and business invitees. The Marine Finance Committee unanimously endorsed the resolution presented today to the full MLA membership.

We heard about a new title insurance policy from Victor Kooock, of First American Title, which addresses vessel construction issues.

The Marine Finance Committee will start some new projects with the assistance of the Young Lawyers Committee. We have a new Young Lawyer liaison which will be engaged with our Committee.

This ends my report.

Thank you.

Respectfully submitted,

Sandra L. Knapp, Chair

FORMAL REPORT OF THE COMMITTEE ON MARITIME ARBITRATION AND MEDIATION

Since May, 2003 the Committee has met two times to discuss issues relating to Maritime Arbitration and Mediation and has been working on a variety of projects.

Maritime Arbitration Act of 2003

The Committee has been looking into developing an approach to have the proposed Maritime Arbitration Act of 2003 submitted to Congress. In particular, the Committee is looking into identifying potential sponsors for the proposed legislation.

CMI Draft Instrument on Transport Law

The Committee continues to follow the issue of whether charter parties are to be excluded from the CMI Draft Instrument which is under discussion at UNCITRAL. The Committee will be meeting to discuss whether to prepare a position paper on the private carriage issue for submission at the

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proposed conference in London to discuss the freedom of contract issue prior to the next UNCITRAL meeting of Working Group III.

Panel Discussion

There was a Panel Discussion of Advanced Mediation Techniques at our meeting on October 30, 2003, in Boca Raton. The Moderator was Robert S. Glenn, Jr. and the Panelists were Richard A. Corwin, of Trimar Defense Services, Inc., James P. Cooney, of Royston, Rayzor, Vickery & Williams LLP and Craig I. Kartiganer, Esq., of The Florida Mediation Group. A lively discussion ensued and a broad range of topics were discussed including but not limited to settlement strategies, submission of pre-mediation briefs, and the merits of a detailed presentation to the mediator. At the conclusion of the panel discussion, the consensus of the Committee was that there are a number of worthwhile issues to discuss and we should continue to have panel discussions relating to mediation issues.

MLA/SMA Liaison Committee

The Liaison Committee has been working with the Society of Maritime Arbitrators on a regular basis.

Newsletter

The Committee has submitted Newsletter No. 21 dated April 29, 2003 which is reprinted in The MLA Report, Document No. 771 dated November 1, 2003 at page 13730 and we are grateful to the editors, Jay Pare and Keith Heard for their efforts in preparing the Newsletter.

Respectfully submitted,

Donald J. Kennedy, Chair

FORMAL REPORT OF THE COMMITTEE ON MARITIME PERSONNEL

The Committee met on Friday, October 31, 2003, Halloween, in Boca Raton, Florida at the fall meeting of the Association. Twenty members and guests participated in a lively meeting on proposed changes in legislation and important cases and developments affecting maritime personal injury practitioners.

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Emotional Distress

Following the U.S. Supreme Court decision in *Norfolk & Western Ry. Co. v. Ayers*, 123 S. Ct. 1210 (2003), the Eleventh Circuit held that a plaintiff in an FELA case, who has asbestosis and has fear of contracting cancer, need not produce objective manifestations of distress, but must show a “genuine and serious” fear. *Jones v. CSX Transportation*, 337 F.3d 1316 (2003).

Punitive Damages

Shortly after our May 2003 meeting, a punitive damages award of \$145 billion, the largest punitive damages verdict in American legal history, was found excessive as a matter of law in a Florida cigarette smokers’ class action seeking damages from major domestic tobacco companies for injuries allegedly caused by smoking. Such a bankrupting punitive award (totaling more than 18 times the companies’ combined net worth) would frustrate the societal interest in protecting all injured claimants’ rights to at least recover compensatory damages for smoking-related injuries. The award was a result of inflamed juror passion and prejudice caused by plaintiffs’ counsel’s egregiously improper argument, which blinded the jury from properly considering the purpose of the award in relation to the companies’ ability to pay. *Liggett Group Inc. v. Engle*, 2003 WL 21180319 (Fla. App. 3 Dist.) (Opinion by Judge David M. Gersten).

The Supreme Court in June 2003 granted *certiorari* in cases from Kentucky and California that upheld punitive damages awards of \$15 million and \$290 million, respectively, against the Ford Motor Company in products liability cases involving much smaller awards of compensatory damages.

The award of \$290 million in punitive damages was 63 times the compensatory award. *Ford Motor Co. v. Romo*, No. 02-1097, May 19, 2003 WL 271315 (case below *Romo v. Ford Motor Co.*, 99 Cal.App.4th 1115, 122 Cal.Rptr.2d 139 (Cal. App. 5 Dist. 2002), rev. den. (Cal. 2002).

The \$15 million award of punitive damages was five times larger than compensatory damages. *Ford Motor Co. v. Smith*, No. 02-1096, May 19, 2003, 2003 WL 271313 (case below *Sand Hill Energy, Inc. v. Ford Motor Co.*, 83 S.W.3d 483 (Ky. 2002).

The justices have ordered courts to examine punitive damage awards exceeding a 9 to 1 ratio to compensatory damages.

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On October 6, 2003, the Court also threw out large punitive damage awards against two major businesses, Philip Morris USA and Chrysler, asking lower courts to reconsider the amounts in light of *State Farm v. Campbell*. In that case, the court provided the business community a significant victory when it threw out a \$145 million damage award against the State Farm Insurance Company. Because the award for actual damages was only \$1 million, a majority of justices said the 145-to-1 ratio for damages was excessive, and suggested that juries considering punitive damage awards should not be permitted to consider a company's wealth.

The Philip Morris case concerned an Oregon janitor whose descendants sued the cigarette maker and won \$79.5 million in punitive damages, 97 times the actual damages awarded. The case is *Philip Morris USA v. Williams*, 124 S.Ct. 56, 157 L. Ed 2d 12 (2003).

The case involving Chrysler concerned a Kentucky widow who was awarded \$3 million in punitive damages for a truck accident that killed her husband, about 13 times the actual damages awarded. The case is *Chrysler Corp. v. Dorothy Clark* 124 S. Ct. 102, 157 L. Ed. 2d 12 (2003).

On Friday, November 14, 2003, a jury in Alabama ordered the Exxon Mobil Corporation to pay the state \$11.9 billion for depriving it of proper royalties on the natural gas the company gathers there.

The jury ordered the company to pay \$63.6 million in actual damages, plus interest over the life of its contract with the state, and \$11.8 billion in punitive damages, making it one of the largest punitive awards ever.

Exxon Mobil called the judgment unjustified and excessive and said that it would appeal.

Wrongful Death Recoveries

In *Miles v. Apex Marine*, 498 U.S. 19, 112 L. Ed. 2d 275 (1990), the Supreme court held that in a Jones Act death case only pecuniary damages were recoverable, as well as pre-death pain and suffering and somewhat inconsistently, the non-statutory recovery for unseaworthiness.

The issue that has been bandied about since then is what happens in claims by Jones Act seamen against third parties since, logically, a seaman should have the same rights as a non-seaman in cases which are not Jones Act cases.

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In *Warren v. Sabine Towing & Transp. Co.*, 831 So. 2d 517 (La. App. 3d Cir. 2002), the court allowed Louisiana law to apply where a Jones Act seaman's death case was against a manufacturer defendant. *Yamaha v. Calboun*, 516 U.S.199 (1996) was applied.

In *Scarborough v. Clemco Industries*, 264 F. Supp. 2d 437 (E.D. La. 2003), the court held that *Warren* would not be followed. The court held that a Jones Act seaman's death case was limited to pecuniary loss, even against third parties, here a manufacturer.

In another restrictive case, the Eleventh Circuit has held that loss of society damages are not available under the General Maritime Law for the non-dependent father of a child killed in a pleasure boat collision. However, because the death occurred in state waters, state law could apply under *Yamaha*. Nevertheless, Alabama law (where the death occurred) would not allow recovery for loss of society either. *Tucker v. Fearn*, 333 F. 3d 1216 (11th Cir. 2003).

Jones Act Negligence

A claim that a crew member was assaulted by a fellow crew member because the owner allowed marijuana aboard and work pressure led to deprived sleep made out a *prima facie* Jones Act claim. An unseaworthiness claim would be a question of fact as to impairment making the crew not reasonably fit and the plaintiff made out a *prima facie* case on unseaworthiness also. *Zuniga v. TMF, Inc.*, 261 F. Supp. 2d 518 (D.C. Va. 2003).

Jones Act Coverage

One who is not employed as a seaman, who spends less than 30 percent of his time doing seamen's work, cannot sue under the Jones Act according to the Fifth Circuit. Plaintiff was interning as a petroleum engineer and he traveled to offshore oilrigs. He was injured while helping with line handling. *Becker v. Tidewater, Inc.*, (No. 01-31420) (6/19/2003).

Unseaworthiness

We previously discussed *Anderson v. U.S.*, 317 F.3d 1235, 2003 A.M.C. 94(11th Cir. 2003) in our formal report of May 1, 2003. The Eleventh Circuit found a bomb from a naval airplane was an "appurtenance to the ship". Other cases have dealt with accidents caused by "appurtenances" off the ship, like the beans on the dock in *Gutierrez*. Many of these cases are cited in *Scott v. Trump Indiana, Inc.*, 337 F. 3d 939 (7th Cir. 2003) (life raft not an appurtenance of the ship when lifted by a shore side crane). In another

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er case, *Barlas v. U.S.*, 279 F. Supp. 2d. 201, 2003 WL 21976406 (S.D. N.Y. 2003), a vessel was unseaworthy when plastic packing strap on deck caused injury to a seaman. The case has a good history of the unseaworthiness doctrine. (The case also dealt with maintenance and cure due until maximum cure or permanency found).

Bareboat Charter – Unseaworthiness

Plaintiff was injured when a boat being hoisted had a line break. The vessel was bareboat chartered. The court held as to the owner, not the bareboat charterer employer, it could only be held liable for a defect pre-dating the charter. *Huss v. King Co., Inc.*, 338 F. 3d 647 (6th Cir. 2003).

Questionable Maritime Employment

An employee in a business providing safety training for ships was seriously injured when a life raft was being lifted onto a pier from a ship. It was lifted by a shore side crane. Admiralty jurisdiction was denied, as well as actions under the Jones Act, the Longshore and Harbor Workers' Compensation Act and the Admiralty Extension Act. The court held that the life raft was not under the control of the vessel and was not itself the cause of the accident. *Scott v. Trump Indiana, Inc.*, supra.

Suits Against the United States

In suits involving naval vessels operated by private companies, the suit is solely against the U.S. under the Suits In Admiralty Act and Public Vessels Act. *Ammar v. U.S.*, 342 F.3d 133 (2nd Cir 2003).

Coast Guard Liability

Decedent dived into shallow water from a boat and was injured. The local fire department wanted to get him to a hospital by ambulance, but the Coast Guard wanted to evacuate him by helicopter. The helicopter did not arrive for about an hour and he eventually died. The court held that plaintiffs need only provide some creditable evidence that defendant's negligence possibly caused or contributed to his death to create a genuine issue of material fact and possibly make the U.S. liable. *Sagan v. U.S.*, No. 01-2568 (6th Cir. 8/25/03).

Limitation of Liability

The "Pennsylvania Rule" provides that a party violating a maritime safety rule has the burden to show the violation did not cause an accident. The rule applies to allisions (hitting a stationary object), as well as collisions.

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In *Trico Marine Assets v. Diamond B. Marine Services*, 332 F. 3d 779 (5th Cir. 2003), limitation was denied where the evidence was that a vessel owner participated in a captain's negligent operation of a vessel, failed to provide a lookout, failed to train the captain in the use of radar, failed to evaluate the vessel's seaworthiness or the captain's competence, failed to employ a safety manager and failed to provide safety training or safety manuals.

The Ninth Circuit ruled that the claimant has the burden of proof as to what caused a loss, even where the shipowner concedes the crew was negligent. The court upheld a ruling below that a collision was caused by navigational errors, not the fatigue of the master of a tug. *In re M/V BOWFIN*, No. 02-35534 (8/13/03).

In the Matter of: the Complaint of Mike's Inc. and Mike's Marine, Inc., 337 F.3d 909 2003 AMC 1954, (7th Cir. 2003) suit was brought against appellants Mike's Inc. and Mike's Marine, Inc. ("Mikes") in Illinois Circuit Court by Kristopher Tinnon. Mike's then filed this case in the Eastern District of Missouri on November 29, 2001, under 46 U.S.C. §181 *et seq.*, seeking exoneration from or limitation of liability from the underlying *Tinnon* suit. After the Missouri District Court dismissed the limitation action for improper venue, appellants then requested that the court transfer the case to the Southern District of Illinois, the proper venue, to avoid the Act's six-month statute of limitations, which would bar appellants from properly filing the suit in Southern District of Illinois. The Missouri District Court refused appellant's request, a decision later affirmed by the Eighth Circuit.

Mike's then re-filed its suit in the Southern District of Illinois, which was dismissed as untimely because more than one year had passed since the shipowner had received notice. Mike's appealed the dismissal to the Seventh Circuit arguing that the Illinois court should have applied the principle of equitable tolling to allow the complaint to be deemed timely. The Seventh Circuit disagreed, and affirmed the judgment of the Illinois District Court, finding that the conduct of the appellants foreclosed the application of the doctrine of equitable tolling.

With respect to equitable tolling, the court indicated that the doctrine's use was limited to those cases where the claimant's error in not bringing the suit within the appropriate time period was made in good faith. The Seventh Circuit concluded that numerous strategic decisions made by the appellants when they filed and proceeded with the case in the Eastern District of Missouri exhibited a lack of good faith. Specifically, the court

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found that the appellants' failure to bring the *In re the Complaint of Mers, Inc.*, 4:01 CV 1453 AGF (E.D. Mo. March 14, 2002) case to the attention of the Missouri court suggested an absence of good faith because the *Mers* case was decided contrary to the appellants' position, and the law firm representing appellants also represented the party bringing the limitation action in *Mers*. Thus, the doctrine of equitable tolling was inapplicable.

The court also stated that the doctrine of equitable tolling should not, in effect, serve as a means for appealing decisions from one district court to another. The court found that granting appellants' request to apply equitable tolling would essentially reverse the decisions of the Missouri District Court and the Eighth Circuit that justice did not require transfer.

Maintenance

The Second Circuit has joined the First, Fifth, Sixth, Ninth and Eleventh Circuits in holding that the collective bargaining agreement (c.b.a.) in a seaman's union contract will be upheld. In *Ammar v. U.S.*, supra, the Court upheld an \$8 c.b.a. provision, noting that the c.b.a. provided many other benefits in favor of a seaman. If there is no c.b.a., the Second Circuit will allow a recovery in excess of \$8. The Third Circuit remains the only circuit denying an \$8 c.b.a. rate (*Barnes v. Andover*, 900 F.2d 630 (3rd Cir. 1990)). The Ammar case also required a 2 percent discount rate for future lost wages and medical expenses if there is an inflationary free environment.

Longshore Act - Timeliness of Claim

The First Circuit has ruled that a claim for benefits under the LHWCA was timely when filed within 2 years of learning the causal link between a medical condition and marine employment. This was a delayed asbestos case. *Bath Iron Works Corp. v. Knight*, 336 F.3d 51, 2003 A.M.C. 1829 (1st Cir. 2003).

Longshore Act – Last Employer

The last responsible employer is solely liable for compensation under the Act. In *Metropolitan Stevedore Co. v. Crescent Wharf and Warehouse Co.*, 339 F.3d 1102, 2003 A.M.C. 2266, (9th Cir. 2003) the last employer for a single day's work was liable for aggravating a continuing knee handicap incurred in the course of (30) years of longshore employment.

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Malpractice Cases Involving Cruise Lines

The Florida state courts have had several cases involving malpractice claims against cruise ship doctors. Many cases held the doctors to be independent contractors, for which the cruise line would not be liable, absent negligent hiring. The District Court of Appeals for Florida's Third Circuit allowed a malpractice claim against the cruise line for a ship doctor's malpractice on the basis of vicarious responsibility. The case was remanded on the issue of malpractice. *Carlisle v. Carnival Corp.*, 2003 A.M.C. 2433 (Fla. App. Ct. 2003) No. 3D01-1518 (8/27/03).

A doctor on a foreign cruise ship was served with a malpractice complaint while the ship was docked in Florida waters. The alleged malpractice occurred on the high seas near the Cayman Islands. Jurisdiction was upheld. *Pota v. Holtz*, 852 So. 2d 379 (Fla. App. Ct. 2003).

One other recent case sought a solution to a death in waters 11.7 miles off the coast of Florida. Plaintiffs were parents of a son who died. The suit was against a cruise line and a contract physician for medical malpractice after the young boy had an allergic reaction to shellfish. The Florida Constitution claims a seaward boundary of the greater of (3) marine leagues, or the edge of the Gulf Stream. The Presidential Proclamation claims a territorial sea of (12) miles, with a proviso that it does not affect domestic law or state maritime boundaries. Under the Submerged Lands Act, Florida is given a state boundary of (3) nautical miles, different from all of the (50) states but one. This was based on Florida's history before it became a state. As to the limitations of the Submerged Lands Act, the decision notes that the Act only refers to the seabed and not the reach of the sea itself. It was important to establish Florida's seaward boundary and obtain jurisdiction over the foreign doctor involved. Presumably, when the issue arises, the Florida law on malpractice would be available as against the doctor, or at least, Florida damages. *Benson v. Norwegian Cruise Line, Ltd.*, 859 So. 2d 1213 (Fla. App. Ct. 2003).

Extension of Admiralty Jurisdiction Act (EAJA)

An injury occurred when a life raft was moved by a shore side crane from the vessel to the dock. The EAJA was held not to apply because, at the time of injury, the court held the life raft was not an appurtenance of the vessel. *Scott v. Trump Indiana, Inc.*, *supra*.

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Release

In *Richards v. Relentless, Inc.*, 341 F.3d 35, 2003 A.M.C. 2151 (1st Cir. 2003), the U. S. Court of Appeals for the First Circuit ruled that release of claims by a seaman is valid where the seaman has been properly advised of his rights. In the instant case, plaintiff seaman was injured while working on a fishing vessel. He was provided with maintenance and cure. He signed a release of claims in exchange for payment of \$8,000.00. He later brought suit against the vessel owner alleging violations of the Jones Act and the warranty of seaworthiness and also seeking additional maintenance and cure. The court found that the shipowner had met the high level of proof required to show that it had properly and completely advised the seaman of his rights under maritime law before he executed the release of claims, No. 02-2337, (2003 U.S. App. Lexis 166848/14/03).

Forum Non Conveniens

The district court decision in *Fantome, S.A.*, was reversed by the Eleventh Circuit on 24 January 2003, No. 02-10890, in a note "Do Not Publish". A 282 foot schooner, a sail cruise ship, used in the Caribbean, went down in a hurricane and the crew of Caribbeans was lost. It was owned by a Panamanian corporation and had the flag (believe it or not) of landlocked Equatorial Guinea. However, the principal shareholder and the operating agent were in Miami Beach, where reservations and other administrative offices were kept. Under these circumstances, the court held the base of operations was in the U.S. and U.S. law was applicable, following *Rhoditis*, and other cases.

Warranty of Workmanlike Performance

The Eleventh Circuit has ruled that a port authority owes a warranty of workmanlike performance to a cruise ship company. A passenger was injured when the gangway collapsed. The contract was part of the port authority's tariff. *Vierling v. Celebrity Cruises*, 339 F.3d 1309, 2003 A.M.C. 1966 (11th Cir. 2003) No. 01-15975 (7/31/03).

POEA Contract Enforced

Bautista v. NCL, 286 F. Supp.2d 1352 (S.D. Fla. 2003) U.S. Dist. Lexis 18274. This is one in a series of recently decided Florida cases where the courts are allowing a shipowner to remove from state to federal court and then move to compel arbitration under the POEA (Philippine Overseas Employment Agreement) Contract in Manila under the Convention on the

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Enforcement and Recognition of Foreign Arbitral Awards. This strategy was previously employed in Louisiana in the Fifth Circuit and now Florida has caught on. No doubt, plaintiffs will be appealing.

The particular case arises out of the highly publicized NORWAY boiler explosion earlier this year, with a number of dead and seriously injured crewmembers.

Prospects Look Dim In Congress For Asbestos Trust Fund

A bill before Congress would close the courts to asbestos claims and set up a national compensation fund. The trust fund would last for 27 years and would collect about \$108 billion payable to those who suffer cancer and other asbestos-related illnesses. The money would come from about 8,500 companies that made or sold asbestos products, but most would pay no more than \$25 million per year. Halliburton, which agreed on a settlement of 200,000 claims for \$4.2 billion, could save about \$3.5 billion, because pending settlements would be cancelled. Prospects for passage were last reported to be bleak, some feeling benefits are too high and others too low. Republicans may try to place this, and a restrictive class actions bill, into one "jobs creation" bill.

I would like to thank Paul Edelman, Esq. for helping prepare these minutes. We are always looking for additional and interesting projects, relevant decisions, and are also continuously seeking potential new members.

Respectfully submitted,

John P. Schaffer

FORMAL REPORT OF THE COMMITTEE ON NAVIGATION COAST GUARD AND GOVERNMENT REGULATION COMMITTEE

The Fall meeting of the MLA's Committee on Navigation Coast Guard and Government Regulation was called to order at 2:12 p.m. by Chairman Dennis Bryant at the Boca Raton Resort & Club in Boca Raton, Florida on October 30, 2003.

Chairman Bryant began by introducing the guest speakers for the meeting. The committee was honored by the presence of Rear Admiral John Crowley, USCG. Admiral Crowley is the Chief Counsel and the Judge

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Advocate General of the Coast Guard. He was accompanied by Captain Joseph Ahern, Chief, Office of Maritime and International Law and Lieutenant Martha Rodriguez, USCG, the Coast Guard's IMO Liaison Officer. The Federal Maritime Commission (FMC) was represented by Ms. Amy Larson, the Acting General Counsel. Mr. Pat Wiese from the Maritime Administration (MARAD) was invited, but was unable to attend due to budgetary constraints. Mr. William Storz of the Military Sealift Command (MSC) was unable to attend due to scheduling conflicts.

Admiral Crowley stated that he wants to strengthen the relationship between his office and the MLA. He discussed some of the challenges facing the Coast Guard, including maritime security and ballast water management. Captain Ahern discussed recent activities at the IMO, including the accelerated phase-out of single-hull tankers and development of guidelines on ship recycling. He also mentioned that the Coast Guard officially revised its definitions of the territorial sea and related jurisdictional terms to conform to recent legislation and court decisions.

In response to a question about maritime security plans, Admiral Crowley stated that the Coast Guard has consistently maintained that foreign vessels subject to SOLAS are not required to submit security plans to the agency so long as they possess a valid International Ship Security Certificate, and have fully implemented the International Ship and Port Facility Security (ISPS) Code. Chairman Bryant pointed out that the various members of Congress and the House Subcommittee on Coast Guard and Maritime Transportation are of the opinion that all ships operating in U.S. waters must submit security plans to the U.S. Coast Guard.

Ms. Amy Larson, the Acting General Counsel of the Federal Maritime Commission, was next to report. She indicated that Paul Anderson, of Florida, recently assumed his position as a Commissioner. The FMC recently entered into a settlement agreement with the Transpacific Stabilization Agreement (TSA) and its members regarding allegations that the carriers had engaged in unfair commercial practices with respect to non-vessel-operating common carriers (NVOCCs). The TSA and its members agreed to make a payment of \$1,350,000 in lieu of civil penalties and make various changes to their practices to reduce any disparate impact on NVOCCs. The FMC is also working with other agencies to enhance maritime security.

Frank Wiswall, of Castine, Maine, discussed an upcoming change to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs). The 2001 amendments to the COLREGs come into effect on November 29, 2003. Most of the changes relate to wing-in-ground (WIG) vessels, but one change amends Rule 8(a) in a manner that may lead

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to confusion. The change creates an apparently inadvertent disconnect between Rule 8 regarding collision avoidance and Rule 2 – the General Prudential Rule.

The Committee also discussed the recent revision of the Memorandum of Understanding (MOU) between the Coast Guard and the National Transportation Safety Board (NTSB). The revised MOU provides the NTSB with increased authority to be the lead agency in certain marine casualty investigations. The ongoing investigation into the boiler explosion on the cruise ship NORWAY is an example of the NTSB taking the lead under the revised MOU. MLA members should expect to encounter the NTSB more frequently in cases of significant marine casualties.

Changes relating to the electronic filing of cargo reports with the Bureau of Customs and Border Protection (CBP) should be expected in the near future. The federal government is unlikely to change its position requiring visas for foreign crewmembers wishing to come ashore in the United States, despite upcoming development of an International Seafarer's Identity Document by the International Labor Organization (ILO).

MEETING ADJOURNED

Respectfully submitted,

Dennis L. Bryant

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

Held at the Hotel Alexis, Seattle, Washington

On

August 2, 2003

9:00 a.m.

The meeting was called to order by President Raymond P. Hayden at 9:00 a.m. In addition to President Hayden, the following Officers were also present:

Thomas S. Rue, First Vice President
Lizabeth L. Burrell, Second Vice President
Warren J. Marwedel, Secretary
Patrick Bonner, Treasurer
Philip A. Berns, Membership Secretary
William R. Dorsey, III, Immediate Past President

The following Board members were present:

James Patrick Cooney	Armand J. Paré*
Robert G. Clyne	M. Hamilton Whitman, Jr.
Robert S. Glenn, Jr.	Robert J. Zapf
Glenn G. Goodier	JoAnne Zawitoski
Robert J. Gruendel	
Edward F. Lebreton, III	
Richard M. Leslie	*attended by phone

At the invitation of President Raymond P. Hayden, Past Board Member, James F. Whitehead, III, of Seattle, Washington was also present at the meeting.

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the May 2, 2003, meeting of the Board of Directors and the Secretary's Report were unanimously approved and accepted. The minutes of this meeting will be published in the Fall 2003 issue of the PROCEEDINGS.

[13801]

TREASURER'S REPORT

Treasurer Patrick J. Bonner, of New York, presented the Treasurer's Report for the quarter ending April 30, 2003. He reported that as of July 31, 2003, dues collections were \$320,266.00, or 85.6% of the \$374,255.00 billed. This is a slight increase in collections over last year. The number of invoices sent out this year was 2,765/126. A slight decrease over last year's number of 2,837/114.

Mr. Bonner reported on upcoming expenses including \$35,000.00 for the directory and approximately \$38,000.00 for the PROCEEDINGS and MLA Report. It is anticipated that a balance of approximately \$13,000.00 will be in the bank at the end of the year.

Upon motion duly made and seconded, the Treasurer's Report was unanimously approved and accepted. A copy of the Treasurer's formal written report will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns, of San Francisco, presented seventeen (17) applicants for associate lawyer membership and indicated the change of membership status of John G. Ingram of Healy & Baillie LLP, from proctor to judicial status. He also reported that Edward Dangler of Kaye, Rose, Maltzman LLP has been changed from non-lawyer to lawyer status.

Mr. Berns reported that the Association had a total membership of 3,180. Of that number, 1,530 are proctor members. Mr. Berns thanked William R. Dorsey, III, Immediate Past President, for his contribution to the directory by drafting a listing of the various organizations the MLA participates in. It is anticipated that the directory will be mailed no later than the end of September.

On motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted, including the list of all successful candidates for membership. A copy of Mr. Berns' written report will be appended to the original of these minutes.

[13802]

INTERNATIONAL ACTIVITIES

COGSA/UNCITRAL Working Group

President Hayden reported on the current status of COGSA/UNCITRAL and the MLA's working group activities. Mary Helen Carlson, of the U.S. Department of State, has been working with various governmental and transportation groups, including the MLA working group. Apparently a compromise on defenses, including limitations, and forum selection, is in the works. Ms. Carlson asked for cargo input on these issues, and the AIMU has apparently agreed that the parties to a service contract may choose a forum and extend that choice to third parties to the service contract in certain situations. The choice may be extended to third parties if:

1. The parties to the service contract agree to extend it to third parties;
2. The choice is either: a) the place of origin; b) the place of destination; or c) the principal place of the carrier's business;
3. Notice of the choice is provided in the bill of lading, probably on the face of the bill of lading.

The definition of service contracts is narrower than that provided in OSRA.

The problem with this proposed compromise is that consignees often don't see a bill of lading until after the cargo arrives, and cargo insurers don't have access to restrictive language in service contracts. There will be another working group meeting in Vienna in October of 2003. The proposal may be found in the position of the United States in Transport Law Working Group III of the UNCITRAL website, <http://www.uncitral.org/en-index.htm>.

Comité Maritime International (CMI) Colloquium

President Raymond P. Hayden reported on the CMI Colloquium held in Bordeaux, France from June 11 to June 13, 2003. In attendance were President Hayden, Past President Howard M. McCormack, First Vice President Thomas S. Rue, Second Vice President Elizabeth L. Burrell, and George Chandler of the Committee on Electronic Communications and Commerce. The subject matters included questions on electronic trade, transport documents, general average, issues of transport law and other areas of international law including place of refuge and marine insurance. No action was taken at the colloquium. Information concerning the CMI

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Colloquium may be obtained from the CMI website at www.comitemaritime.org.

There will be a formal CMI plenary session in Vancouver, Canada from May 30 through June 5, 2004. Information may be obtained from the CMI website at www.cmi2004.org.

COMMITTEE AND STUDY GROUP REPORTS

Committee Chairs

President Hayden reviewed committee chairs and board of director liaison assignments. He encouraged the directors to become more proactive in attending committee meetings and encouraging committee chairs to prepare advance agendas for committee meetings, have speakers, prepare papers, and help coordinate with other directors and committee chairs on subjects that have broad MLA interest. It is recognized that committee work is the real strength of the Association, and the most productive committees plan, execute and report their activities. Committee chairs should coordinate with the CLE Committee if they desire CLE credit for committee meetings. Generally, this will require the preparation of written materials.

FALL MEETING 2003 – BERMUDA

President Hayden reported on the plans for the Bermuda meeting to be held from October 28 through November 2, 2003 at the Fairmont Southampton Princess Hotel. While the contract for this meeting was signed some years ago, the Bermuda committee has attempted to implement many of the suggestions coming from members through the special *ad hoc* committee on MLA membership and participation enhancement. The meeting has been shortened so that members may arrive Wednesday night, attend the President's Welcoming Reception, and have two days of CLE/seminars and committee meetings. The annual fall meeting will be on Saturday morning, and the dinner dance Saturday night. Black tie has been eliminated for the dinner dance. Athletic activities will be held prior to the meeting.

President Hayden reviewed the list of impressive speakers who are leaders in their respective marine and insurance industries. All members are encouraged to attend this meeting and comment on the revised format.

[13804]

PRESIDENTIAL ACTIVITIES

President Hayden reported on his activities including attendance at the Average Adjusters meeting and dinner on May 8, 2003, his speech at the SEALI meeting in Atlanta, Georgia on June 27, 2003, and his upcoming speech at the International Union of Marine Insurers in Seville, Spain, September 16, 2003.

ON-LINE ACCESS TO MLA PAPERS

Secretary Warren J. Marwedel, of Chicago, reported that the Law Library Micro Forum Consortium, located in Hawaii, is contemplating putting all MLA documents on line. This would be without charge to the MLA, and accessible by public and private law libraries that pay a fee. Questions were raised as to copyright waivers, and further information will be obtained before the Board makes a decision on participation in this project.

ALTERNATIVE MEETING SITES

First Vice President Thomas S. Rue, of Mobile, reported on the activities of the *ad hoc* committee seeking an alternative location for the Fall 2004 Meeting. Mr. Rue reported on his meeting with representatives of the New Orleans MLA Bar and Tulane Maritime Institute on the possibility of holding a meeting in New Orleans sometime in the fall of 2004, rather than in New York. Mr. Rue reported that the New Orleans Bar, and the Tulane Maritime Institute were supportive of a Fall 2004 Meeting. However, considering the time involved, this meeting probably could not be held in conjunction with the Tulane seminar presently scheduled for March 2005. The 2004 fall meeting would provide CLE, committee meetings, and at least one evening social function. After a general discussion on the feasibility of such meeting, it was agreed that the MLA should hold its Annual 2004 Meeting in New Orleans. President Hayden will appoint a committee to organize that meeting.

AD HOC COMMITTEE ON ENHANCING MLA MEMBERSHIP AND ACTIVITIES

Second Vice President Lizabeth L. Burrell, of New York, chair of the special *ad hoc* committee working on enhancing MLA membership and member participation in the MLA activities, gave a follow-up report on the

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status of the committee's work to date. She indicated that the committee, while still gathering and analyzing information, has concluded that the principle value of the MLA, to its members, is committee work, networking, and CLE. Most of the work done by the MLA is through its various committees. Attendance at these meetings allows members to learn what is happening in areas of their practice and other areas of maritime practice that may have an ultimate impact on the individual lawyer. It is an opportunity to work with lawyers from other parts of the country, work with non-lawyer leaders in industry and obtain the necessary CLE required by many states. The brown bag luncheons, held with members, has disclosed that many members are not familiar with the work done by the Association and its committees. One of the challenges ahead is making sure members are more aware of the many benefits and are able to participate in the committees and activities of the Association.

Committee officers are in the real leadership roles for the work of the Association. This work takes planning and organization, and the utilization of developing communication technology to enhance participation and communicate with members on what's happening. Successful committees have agendas, speakers, papers, and oral and written reports to the membership explaining significance of their activities. Often, committees get so involved in the details of their work, that they forget to communicate useful information to the membership via presentations, reports, and other materials that may be put on the website.

A discussion was held concerning setting guidelines for committee operations, liaison duties for board of directors and increasing the number of non-lawyer maritime industry leaders in the Association and committee work.

The committee is also looking at the structure of the New York meetings, including duration, location of meetings and the dinner dance itself. While some members have suggested a reception rather than a sit down dinner, many members do not realize the significant financial contribution New York firms make to the Association by guarantying several tables at the dinner. This financial support would be lessened if only a stand-up reception were held. The issue of black tie is also being reviewed.

Ms. Burrell indicated that the interim report of her committee will be published on the website, and that she anticipated the final report to be presented to the Board in Bermuda this fall.

[13806]

**National Conference of Commissioners for Uniform State Laws
(NCCUSL)**

Director Richard M. Leslie, of Miami, reported on an ABA review of a proposed study instituted by the National Conference of Commissioners for Uniform State Laws, to draft a standard law for marine insurance. This is a project originally looked at by the ALI. Mr. Leslie indicated he would forward written materials to the Board members for further consideration at the fall meeting.

Calendar

- A. IMO Legal Committee meeting – October 13 – 17, 2003
- B. Fall Meeting of the Association – Fairmont Southampton Princess Hotel, Bermuda – October 28, 2003 to November 2, 2004
- C. May 30 to June 5, 2004 – CMI Conference in Vancouver, Canada.

Future Officer and Board Meetings

- A. The Officers will meet in Bermuda on Tuesday, October 28, 2003, from 5:00 – 7:00 p.m.
- B. The Board of Directors will meet in Bermuda on Wednesday, October 29, 2003, from 9:00 a.m. to 12:00 p.m.
- C. Spring Meeting in New York, May 7, 2004.
- D. Fall Meeting 2004 – Tentatively New Orleans.

Seattle Board of Directors Meeting

President Hayden extended his thanks to James F. Whitehead, III and Bruce King, of Seattle, for making arrangements for the Board of Directors Meeting and the very excellent seminar concerning the fishing industry in the Pacific/Northwest.

There being no further business to come before the Board, the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

Warren J. Marwedel
Secretary

[13807]

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

Held at the Boca Raton Resort, Boca Raton, Florida
On
October 29, 2003
and
November 1, 2003

The October 29, 2003, meeting was called to order by President Raymond P. Hayden at 4:00 p.m., and the November 1, 2003, meeting was called to order at 8:30 a.m. In addition to President Hayden, the following officers were also present:

Thomas S. Rue, First Vice President
Lizabeth L. Burrell, Second Vice President
Warren J. Marwedel, Secretary
Patrick J. Bonner, Treasurer
Philip A. Berns, Membership Secretary
William R. Dorsey, III, Immediate Past President

The following Board members were present:

Robert G. Clyne	Richard M. Leslie
James P. Cooney	Armand M. Paré
Robert S. Glenn, Jr.	John P. Schaffer
Glenn G. Goodier	M. Hamilton Whitman, Jr.
Robert J. Gruendel	Robert J. Zapf
Edward L. LeBreton, III	JoAnne Zawitoski

At the invitation of President Raymond P. Hayden, Past President James F. Moseley, of Jacksonville, Arrangements Committee Chair Robert B. Parrish, of Jacksonville, and Marion McDaniel, of Houston, the 2005 Fall Arrangements Committee Chair, were also present at the meeting.

SECRETARY'S REPORT

Secretary, Warren J. Marwedel, of Chicago, reported that Law Library Micro Forum Consortium, of Hawaii, has agreed to put all of the MLA microfilmed documents on the web, with no charge to the MLA. The MLA will also receive free disks of all of the documents in a form compatible with the MLA website.

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The Secretary also reported that the DIRECTORY, PROCEEDINGS, and the MLA REPORT will be combined in one mailing at a substantial savings to the Association.

Upon motion, duly made and seconded, the minutes of the August 2, 2003, meeting of the Board of Directors, and the Secretary's Report, were unanimously approved and accepted. The minutes of this meeting will be published in the Fall 2003 issue of the PROCEEDINGS.

TREASURER'S REPORT

Treasurer Patrick J. Bonner, of New York, presented the Treasurer's Report and the Accountants Statement of Cash Receipts and Disbursements through April 30, 2003. He reported that as of October 23, 2003, the MLA had cash of approximately \$149,000.00, the same figure as a year ago. He further reported that the dues increase had no appreciable effect on membership.

The Treasurer reported on efforts to reduce expenses, but noted that many annual costs, such as printing, are fixed and not susceptible to significant reduction.

Mr. Bonner reported that he expected the \$35,000.00, advanced to the Fall 2003 Arrangements Committee, would be repaid; and that at the end of the year the Association would have a balance of between \$20,000.00 - \$25,000.00.

Upon motion, duly made and seconded, the Treasurer's Report was unanimously approved and accepted. A copy of the Treasurer's formal written report will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns, of San Francisco, presented seventeen (17) applicants for associate lawyer membership. He also reported proctor applications for the following members:

Richard J. Nikas, of Costa Mesa
Michael S. McDaniel, of Los Angeles
Douglas John Shoemaker, of Houston
James C. Winton, of Houston

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Mr. Berns reported the nominations of three (3) non-lawyer member as follows:

Paul J. Ferguson
V.P New York Regional Claim Manager
AI Marine Adjusters
New York, New York

Victor Y. Goldberg
V.P. Ship Management
Marine Transport Corp.
Weehawken, NJ

Fred Robertie
CEO/President
American Hull Insurance Syndicate
New York, New York

Mr. Berns reported that the Association had a total membership of 3,176. Of that number, 1,528 are proctor members.

On motion, duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted, including the list of all successful candidates for membership. A copy of Mr. Berns written report will be appended to the original of these minutes.

INTERNATIONAL ACTIVITIES

COGSA/UNCITRAL Working Group

President Hayden reported on the current status of COGSA/UNCITRAL, and the MLA's working group activities. He reported that the U.S. Department of State has been consulting with various governmental and transportation groups on a compromise on defenses, limitations and forum selection.

Director Jay Paré, of New York, reported that the current UNCITRAL draft on carriage of goods is available on the UNCITRAL website. In reviewing the draft, he reported there are issues concerning the impact on freedom of contact which may have to be addressed by the MLA. While the draft reportedly covers both common and private carriage, the overall

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impact of the document seems to deal primarily with common or public carriage. There are limitations on a carrier's ability to deviate from the instrument, thus restricting private carriage.

President Hayden noted that the MLA will have to address these issues and give advice to the State Department.

There was a working group meeting in Vienna in October of 2003, and there will be another meeting in New York next spring. The current draft of the instrument may be found on the UNCITRAL website at www.uncitral.org.

The Arbitration and Carriage of Goods Committees will be looking at the draft and are expected to prepare a paper with analysis and recommendations.

Comité Maritime International (CMI) Colloquium

President Raymond P. Hayden made a follow-up report on the CMI Colloquium held in Bordeaux, France in June of 2003 covering electronic trade, transport documents, general average, issues of transport law, place of refuge, and marine insurance. No action was taken. Information concerning the CMI Colloquium may be obtained from the CMI website at www.comitemaritime.org. There will be a formal CMI Plenary session in Vancouver, Canada from May 30 through June 5, 2004. Information may be obtained from the CMI website at www.cmi2004. The major topic will be consideration of the York Antwerp Rules.

International Maritime Organization (IMO)

President Hayden reported that he and First Vice President Thomas S. Rue, of Mobile, attended the IMO Legal Committee meeting in London last month. Issues discussed included SUA, Wreck Removal, and Ports of Refuge. The State Department is taking the lead in dealing with SUA, and there is a possibility there will be a diplomatic conference on SUA next fall.

The next IMO meeting will be in London from April 19 to 23, 2004, and a London meeting from October 25 to 29, 2004.

Canadian Maritime Law Association

President Hayden reported that Canadian Maritime Law Association President, Sean Harrington, has been made a federal judge. Peter Cullen is the new president of the CMLA.

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COMMITTEE AND STUDY GROUP REPORTS

Committee Chairs

In recognizing the importance of effective committee leadership, Robert S. Glenn, Jr., of Savannah, is providing the Board with an interim report on his development of guidelines for committee chairs and officers. These guidelines will be reviewed and discussed at the next board meeting.

FALL MEETING 2003 – BOCA RATON

Robert B. Parrish, of Jacksonville, Chair of the Arrangements Committee, reported on the status and events of the 2003 Fall Meeting in Boca Raton, including the Herculean work of his committee in relocating the meeting from Bermuda to Florida, after a devastating hurricane hit Bermuda and severely damaged the Fairmont Southampton Princess Hotel. Bob gave special recognition to the MLA's meeting coordinators, Jerry Janove and Debra Jacobs, of Resort Meetings, for their quick location of an alternative meeting site.

President Hayden and the Board gave a very special thanks to Bob and his committee for their hard work in planning, what in effect was, two meetings.

ALTERNATIVE MEETING SITES

First Vice President Thomas S. Rue, of Mobile, reported on the activities of the *ad-hoc* committee for the Fall 2004 meeting. Mr. Rue reported on his meetings with MLA representatives in New Orleans, and the status of hotel and reception arrangements. He reported it would be a standard fall meeting with CLE, and committee meetings which would be held at various nearby MLA member offices. The tentative dates are November 11 to 13, 2004.

AD HOC COMMITTEE ON ENHANCING MLA MEMBERSHIP AND ACTIVITIES

Second Vice President, Lizabeth L. Burrell, of New York, chair of the special *ad hoc* committee on enhancing MLA membership and participation, indicated that her committee's interim report is now on the MLA website. The committee is still reviewing and analyzing information, and encourages all members to review the interim report and send their comments to her for further review.

[13812]

National Conference for Commissioners for Uniform States Laws (NCCUSL)

Director Richard M. Leslie, of Miami, reported on the ABA review of a proposed study initiated by the National Conference of Commissioners for Uniform State Laws (NCCUSL) to draft a standard law for marine insurance. This would be similar in concept to the Uniform Commercial Code, adopted by the various states.

While the MLA has consistently supported uniformity of maritime law, the focus has always been on a federal approach rather than a state one. The MLA has been asked to consider what position, if any, to take on this proposed study.

President Hayden will refer this issue to the Insurance and Uniformity committees for their consideration and recommendations.

Fall Meeting 2005 – Scottsdale

Marion McDaniel, of Houston, chair of the 2005 Fall Arrangements Committee, reported on the status of the contract with the Fairmont Princess Hotel in Scottsdale. President Hayden will be appointing members to that committee. The dates are November 2 to 5, 2005.

PRESIDENTIAL ACTIVITIES

President Hayden reported on his activities including his speech at the IUMI meeting in Seville, Spain in September of 2003, and attendance at the Average Adjusters Dinner and MICA Dinner in October of 2003.

Calendar

- A. IMO Legal Meeting in London – April 19 to 23, 2004.
- B. Spring Meeting of the Association, New York – Friday, May 7, 2004.
- C. CMI Conference in Vancouver, Canada – May 30 through June 5, 2004.
- D. Fall meeting of the Association in New Orleans, November 11 to 13, 2004.

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Future Officer and Board Meetings

- A. Washington Officer's meeting January, 2004.
- B. March Board meeting 2004.
- C. Spring Board Meeting, New York, May 6, 2004.
- D. Fall Meeting 2004 – New Orleans, November 11 to 13.

There being no further business to come before the Board, the meeting was adjourned at 5:00 p.m.

Respectfully submitted,

Warren J. Marwedel,
Secretary