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| **President's Newsletter Winter/Spring 2001** |
| **Author:** William R. Dorsey, III**Source:** MLA**Doc. No.:** 755**Date:** March 1, 2001March, 2001 Document No. 755**PRESIDENT'S WINTER/SPRING 2001 NEWSLETTER****SPRING MEETING - NEW YORK**Dear Member:The spring meeting of the Association will take place in New York during the week of April 30 - May 4, culminating with the usual general meeting of the Association on Friday morning May 4. As in the past, the general meeting will take place in the Great Hall at the Association of the Bar of the City of New York, 42 West 44th Street. There will be a black tie dinner at the Marriott Marquis Hotel on Friday evening. This dinner is open, as usual, to members and guests. You should have received the announcement for Spring MLA Week prior to receiving this newsletter. I encourage you to indicate your intention to attend the dinner in accordance with the provisions of the dinner notice as soon as possible. This would be a great help to Brett Kelly, Chair of the Dinner Committee, and the others arranging seating for the dinner. For those who seek assistance with respect to hotel accommodations, Resorts Meetings will provide this assistance once again. Please take particular note of the various dates by which the hotel reservations must be made. You should feel free to contact the hotels directly, or Resorts Meetings, with reference to accommodations for hotels designated in the notice. As always, you should book early.The meeting notice also contains a complete listing of all committee meetings of the Association that are scheduled for MLA week. The schedule for these meetings, and their location, can also be found on the MLA web site at www.mlaus.org.There will also be a program provided on Friday afternoon by the Young Lawyers Committee and The Forum of Maritime Law Teachers for which CLE credits will be available. The program is entitled "Coast Guard as Maritime Enforcer", and the speakers will be Capt. Malcolm Williams (USCG-Ret.), former Chief, Maritime and International Law Division, USCG, and LCDR Bruce Dalcher, U.S. Coast Guard Academy. As in the past, this program will take place in the Great Hall at the Association of the Bar of the City of New York, commencing at 2:30 p.m.**ADMINISTRATIVE DEVELOPMENTS****1. Directory**We are already in the process of preparing a new MLA Directory which we hope to have in your hands by the end of the summer. It took us longer than we expected to get the current Directory published, but that was essentially because there was a two year gap between that Directory and the previous one. This year the process should be a lot smoother. As I promised you, we will continue to publish the Directory on a yearly basis, at least for the foreseeable future.If there have been changes in your address, telephone number, etc., please make sure that you notify our administrator in Buffalo, Robin Becker. You can use the card in your Directory for that purpose. The cutoff date for changes will be about two weeks after the close of the May meeting. In particular, if you have not advised us of your e-mail address, I request you do so.**2. Web Site**The Document Library portion of our web site is now up and running. You will find the Proceedings for both the May 2000 and the November 2000 meetings located there. Each can be downloaded in its entirety in PDF form. For convenience sake various portions of the proceedings are listed separately, such as the reports of special committees, reports of officers, oral reports of standing committees, etc. In addition, various committee reports and committee newsletters can be found under committee headings. Forms for non-lawyer, proctor and associate membership applications and request forms for amicus briefs are now available on the Document Library. A separate section of the Document Library will contain various resolutions passed by the Association and the President's Newsletter.Much credit for all of this goes to Glen Oxton, the Chair of the Electronic Communication and Commerce Committee. It is essentially through his efforts that we have come as far as we have with our web site. However, we are still in the embryonic stage, particularly with respect to the Document Library, and I expect that it will be developed further in the future. For instance, we plan to post the most current draft of our proposed COGSA bill in the near future.As previously reported, we have also established a Links section on our web site. At this point it is still relatively primitive, but Professor John Paul Jones has taken on the task of adding appropriate links to this section and is hard at work expanding it so that it should provide a valuable resource tool for members.**3. Amicus Requests**Since my Summer/Fall 2000 Newsletter we have acted on two additional requests for participation by the Association as amicus curiae. The first request was in connection with the case of Steven Henry Arthur Adams, et al. v. Unione Mediterranea di Sicurta, et al. This involved a decision by the United States Court of Appeals for the Fifth Circuit which permitted a salvor of property and its purchaser to offset a conversion judgment obtained against them by the owner of the property in the amount of the value of their salvage claim. Although the salvage claim had lapsed with the passage of the two year prescriptive period, the court permitted the claim to be asserted by affirmative defense as a set off. The plaintiffs, whose conversion judgment was reduced by the salvage claim, filed a Petition for Certiorari to the Supreme Court and sought the Association's support in connection with the Petition. This request was declined, it being felt by me and the two Vice Presidents that the case was fact specific, and that the issues involved in the context of the case did not satisfy the very stringent criteria set forth in By-Law 702.3.The second request also involved a case in the United States Court of Appeals for the Fifth Circuit,Racal Survey, USA, Inc., et al. v. M/V COUNT FLEET, et al., 2001 AMC 456. In this case the Fifth Circuit held that an owner of seismic survey equipment under lease to the charterer of four vessels and later transferred by the charterer to four other vessels, had no maritime lien on the latter four vessels. On the grounds that (1) plaintiff did not rely on the credit of the vessels, and (2) the necessaries were supplied to the charterer and not to its vessels, citing Piedmont and George's Creek Coal Company v. Seaboard Fisheries Co., 41 S. Ct. 1 (1920), the Fifth circuit reversed a District Court grant of summary judgment granting the maritime lien. Again, I and the two Vice Presidents felt that this case was basically fact specific, that the decision did not involve any significant change in maritime law, and that, in any event, the issues involved in the case did not satisfy the criteria set forth in By-Law 702.3.You will recall that in my last newsletter I reported that the Association had submitted an amicus brief in support of the grant of a Petition for Certiorari in the case of Mobil Mining and Minerals v. David R. Nixson and Director, Office of Workers' Compensation Programs. The question in that case was whether, when any part of a manufacturing facility is used for loading and unloading vessels, the entire facility, including non-maritime areas, is "customarily used" for such purposes, and, thus, is a "covered" sight under Section 3(a) of the Longshore & Harbor Workers' Compensation Act. While we felt that there was a clear conflict between the Circuits on this issue, the Supreme Court has declined to take certiorari.All too often when we receive a request for amicusparticipation the required form printed on page 14, Section III, of the Directory is not submitted, and the requirements of By-Law Section 702.2 are not met. This merely delays the processing of the claim because I then write back to the petitioner and advise of the steps that he or she must follow, all of which are outlined in the Directory. This often uses up valuable time. Accordingly, I would remind those who are considering making anamicus request to do the following: (1) submit the required form and all the information and documentation required by the form with your initial request, and (2) don't wait until the last minute. The process for review of these requests is not performed overnight. In the first instance it is reviewed by the President and the two Vice Presidents. If they feel there is merit, it then has to be sent to the Board, and the Board must approve by a 2/3 majority vote. All of this takes time. Those who do have valid requests will greatly facilitate the process by anticipating their request and submitting it in a suitable, timely fashion.**4. Non-Lawyer Membership Application Forms**We have developed a form to be used in connection with all non-lawyer applications for membership. The form is designed to ensure we receive the necessary pertinent information concerning the candidate. It can be downloaded from the Document Library at our web site or obtained from me upon request. Those planning to nominate candidates for non-lawyer membership should submit the required paperwork at least two weeks before MLA Week to ensure consideration during that week.**5. Site Selection**We have recently signed a contract with the Southhampton Princess in Bermuda to hold our meeting there on October 28-November 1, 2003. We are currently negotiating with the Scottsdale Princess in Scottsdale, Arizona, for a meeting on November 1-5, 2005. We plan to change our schedule somewhat for these meetings, holding sports day on Wednesday, Committee meetings Thursday (and Friday afternoon), seminar on Friday morning and the General Meeting and Dinner Saturday.**6. Journal of Maritime Law and Commerce**I would like to call to your attention a special, and slightly offbeat, issue of the Journal of Maritime Law and Commerce, Volume 31, Nr. 4. It is entitled"Admiralty Law in Popular Culture." It explores the contribution admiralty law has made to literature, music, television, poetry and the movies. It is both entertaining and informative.**COMMITTEE PROJECTS****1. The Carriage of Goods Committee**As a result of the change in Administration and the agenda that the new Administration has set for Congress, it is unlikely that our COGSA bill will be given any serious consideration prior to sometime in the fall, at the earliest. In addition, Senator Kay Bailey Hutchinson, who has been such a supporter of our bill, is to be given a new assignment. She will be Chair of the Aviation Subcommittee of the Senate Commerce, Science, and Transportation Committee. The new Chair of the Surface Transportation and Merchant Marine Subcommittee of the Senate, Commerce, Science and Transportation Committee, to which our bill is assigned, will be Senator Gordon Smith, a Republican from Oregon. Senator Smith's approach to our COGSA bill is not yet known.It is apparent, however, that our COGSA bill has had effect elsewhere. I refer to the report of the activities of the CMI International Subcommittee on Transport Law at the Singapore Conference, set forth at pp. 11-12 of this newsletter. There is little doubt that our COGSA bill has had a great deal of influence on the deliberations of that group. The substantial support for elimination of the errors in navigation defense is a major development in that Subcommittee, and I am sure that the work that we did on our new COGSA in that connection has been an important factor. Chet Hooper, Vince DeOrchis, George Chandler and Mike Sturley continue to do yeoman work on these issues.2. **Environmental Crimes Subcommittee.**In its notice of public meeting appearing in the Federal Register on October 18, 2000, the U.S. Coast Guard posed a series of questions in connection with the setting of its agenda for oil pollution prevention, preparedness, and response in the 21st century and invited comments on same. Fred Kuffler, the chairman of the Environmental Crimes Subcommittee, and the other members of that committee, thought that this would provide an excellent opportunity for the MLA to reiterate its concern with the ongoing conflict between criminal and civil issues in oil spill cases. Accordingly, the subcommittee prepared a statement to be submitted on behalf of the Association for my review and editing. After approval by the Board the statement was submitted on December 22. In that statement we reiterated the previously taken position of the Association submitted by former president Howard McCormack in March of 1999. We stressed that it was evident from existing legislation that Congress' highest priority with respect to oil pollution cases was instant response and safety. We indicated that that this priority is being subverted by the justifiable fear of criminal prosecution in connection with oil spills, even when such spills are unintentional and/or non-negligent. We indicated, inter alia, that we continued to support the elimination of the use of so-called crimes of strict liability, as the Refuse Act and the Migratory Bird Act, in connection with oil spills, and supported the use of qualified privileges and immunity in connection with statements made in the course of response efforts, as well as investigations into the cause of marine casualties. We stated that there should be a similar qualified privilege for internal audits, be they voluntary or those required under ISM and ISO codes. We indicated that we felt that the systematic implementation of qualified privileges would allow the Coast Guard to meet the primary public interest concern of OPA '90 - response and prevention.What will ensue as a result of this statement remains to be seen. Legislation was introduced in the 106th Congress by Senator Breaux and various congressmen to eliminate the use of the Refuse Act and Migratory Bird Act in connection with OPA '90 oil spill cases. The Bills were not acted on and died at the end of the congressional session. Hopefully they will be re-introduced this session.I want to express my appreciation to Fred Kuffler and the other members of the Subcommittee particularly Larry Kiern, Dennis Bryant, Mark Kasanin, Tom Wagner, Jane Barrett, Pat Bonner, Tom Russo and Matt Marion for their assistance in preparing the response to the Coast Guard.**3. Practice and Procedure**In my last newsletter I reported that on behalf of the Association I had written to the clerk of the court and the chief judge of the United States District Court for the District of New Jersey in connection with their local admiralty rule that would have raised the security deposit for seizure of vessels more than 65 feet in length from $4,000 to $10,000. I am happy to say that the letter has had some effect. That rule has been suspended pending further consideration by the judges of the court. Indeed, Judge John Bissell of the court called both me, Jim Bartlett, the chair of the Practice and Procedure Committee, and Andy Goldstein, the vice-chair of the Practice and Procedure Committee, to discuss our concerns.At this time Andy Goldstein is working on a solution with the local rules committee. If any of you have information concerning requirements for large security deposits in your own jurisdictions, I would appreciate your communicating the information to Jim Bartlett.**4. Cruise Lines Committee**At the most recent meeting of the IMO Legal Committee last October, there were some significant developments pertaining to the proposed protocol to the Athens Convention bearing on the liability to passengers of cruise ships which reflect a considerable change in position within the Committee. Up until this recent meeting, the majority of the Committee seemed fairly committed to the idea that there would be no change in the basis of liability as set forth in the current Athens Convention, a regime based on negligence, but with a reverse burden of proof in operational or shipping incidents, i.e., those incidents where injury or damage is caused by a collision, stranding etc. In several past sessions the Japanese Delegation had put forth a proposal for a two-tier system which would apply strict liability to a first tier of capped damages, and a second tier which would be based on negligence with a reverse burden of proof. This seemed to have little support until after inter-sessional meetings last summer, as a consequence of which the Committee moved strongly toward the Japanese position in its session last October. Importantly both the P&I Clubs and the International Chamber of Shipping expressed support for this position, although the ICS favored, as did a few other delegations, that in non-shipping incidents there be no reverse burden proof. This shift of position was a major development and a surprise to many, including me.There was another very important development, which was the inclusion of a provision that would give state parties the right to impose unlimited liability on the carrier (but not the insurer). This is a very significant development in my mind because we have always been told that the reason the United States has never signed onto the Athens Convention is because of its dissatisfaction with the limits of liability contained in the Convention, which it felt were too low. Currently U.S. cruise ship passengers can not be subject to contractual limitation provisions on cruises originating or ending in U.S. ports. There is, of course, the Limitation of Liability Act, but judges do not like it and rarely impose it.The fact that the Athens protocol may contain a provision for states to provide for unlimited liability of the carrier, plus the fact that the International Group of P&I Clubs and the ICS have indicated that they would cooperate in working toward implementation of a two-tier regime, prompts me to wonder whether or not the MLA should urge the US delegation to sign on to the new proposed protocol, at least if there is a provision that would retain the negligence concept, with burden of proof on the passenger, with respect to non-operational (grounding, collision, fire, etc.) type accidents. I believe the U.S. government would be receptive to such a position, and it seems to me this might be an opportunity for the United States to come on board with respect to an international liability convention, something that hasn't happened very much in the recent past and which has seriously affected the United States' reputation in international conventions that focus on various liability regimes. Because of this, I've asked the Committee on Cruise Ships to take a sounding to see what industry's views are on these developments, and whether or not it would recommend the MLA urge the U.S. Delegation to the IMO Legal Committee to support the protocol. To date, the reports I have from Ann Miller, the chair of the Cruise Ship Committee, is that there does not seem to be any strong feeling in opposition to this proposal. If the P&I Clubs and the International Chamber of Shipping are in favor of it, it would seem that there should be no opposition from our part. It is certainly true that the major beneficiaries of this would be cruise ship passengers, most of whom are U.S. citizens. Under current law, they cannot be subject to the Athens Convention if the cruise originates or ends in a U.S. port. They can, however, by contract be subject to the Athens Convention if the cruise is between two foreign ports.I expect to get a report from the Cruise Ship Committee at or before our meeting in May. In the meantime, for those of you who may want to know more about this, I have prepared a memorandum concerning the proposed protocol which discusses the pros and cons of the proposal and which I would be happy to send to you if you drop me a line.**5. Maritime Personnel Committee**As previously reported to you, under the supervision of John Schaffer, the chair of the Committee on Maritime Personnel, the MLA had responded to a questionnaire proposed by the IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers. Since that time, that organization has met in London and has issued a report. I have sent this report on to John Schaffer in order to obtain comments from his committee concerning the direction that the working group appears to be taking on the various issues. One point that leaps out of the report is the suggestion that there should be a convention regarding death and personal injury for seafarers that would apply strict liability as the basis of liability and would provide for compulsory insurance with the right of a direct action against underwriters by seamen or their relatives. While much of what this working group is doing concerning abandonment of seafarers is hardly controversial and would be universally viewed as necessary, it is certain that the direction it seems to be heading in connection with personal injury and death of seafarers will be quite controversial.**6. Young Lawyers Committee**I am happy to report the Young Lawyers Committee has begun the task of commencing the indexing of MLA documents produced after 1986. The efforts of the committee in this respect are still in the embryo stage, but Doug Muller, chair of the Committee, assures me that it is gathering momentum, and he intends to see the project through to completion. If so, it will be a great benefit to the Association and is something that could be made available to everyone on the Document Library of our website.**7. Ad Hoc Committee on Revision of Title 46**In early February I learned that a branch of the U.S. government, I wasn't exactly sure which, was undertaking revision of many provisions of Title 46 and the codification of various uncodified portions of Title 46. Those of you who have been around awhile will recall that there was a similar project that took place in the early 1980's in which the Maritime Law Association played a significant role. Then, as now, the purpose of the codification and re-codification is not to change the substantive law, but to reorganize and, in some instances, rephrase existing law to make it readily accessible and comprehensible and to eliminate those sections which are outdated and no longer viable. Our job then, and one that I perceive to be similar in connection with this project, is to see that the work accomplishes just that, i.e., no substantive changes and a careful preservation of legislative intent. As we all know, unintended substantive law changes can occur in the course of re-codification.I have appointed Dennis Bryant as chair and Hal Watson as vice chair of an ad hoc committee on this Title 46 revision process. In addition I have sent copies of the documents that I obtained to the chairs of the following committees: Legislation, Practice and Procedure, Carriage of Goods, Limitation of Liability, Practice and Procedure, Coast Guard and Navigation, Personnel, Marine Finance, Marine Insurance, Uniformity, Salvage, Carrier Security, Carriage of Goods, Cruise Lines and Criminal Law. Dennis will be organizing the ad hoc committee with representatives from each of these committees and any other interested committees that need to be involved. He has already been in contact with the Assistant General Counsel for Legislation in the office of the Secretary of Transportation offering the MLA's assistance. He has been advised that the Office of Management and Budget has blessed our involvement in the effort, and that we will be consulted in connection with this project. The Coast Guard also knows and supports our involvement in the project.This will be a multi-year project, and certainly an extremely important one from the standpoint of the MLA. As Dennis Bryant indicated to the various committee chairs, "We as a group have far more experience in dealing with most parts of Title 46, than does anyone in government." It should be reiterated that in connection with this project, we are not being asked to change the law to what we would like it to be. The process that is going on is the updating of the language and organization of Title 46, and our mission is to prevent any inadvertent substantive changes and to make sure that any changes that do occur accurately reflect current substantive law and legislative intent. I am sure we will hear more about this project at the May meeting.**8. Ad Hoc Committee on Multi-Jurisdictional Practice**The American Bar Association has established a Commission to study various issues of multi-jurisdictional practice, and the difficulties associated with the interstate practice of law. Some background information on the work of this Commission can be found in the March 6 issue of U.S. Law Week, commencing at page 2524. Various organizations, including the MLA, have been asked to assist in the study of the issues surrounding multi-jurisdictional practice and, where possible, propose solutions. This is a project of great importance to maritime lawyers as we have all been faced with questions in this area from time to time. I have established an ad hoccommittee chaired by Jim Bartlett (Chair of our Practice and Procedure Committee) and which will include representatives from other concerned committees, such as Arbitration, Marine Finance, Navigation and Coast Guard, Marine Insurance, Young Lawyers, Carriage of Goods, Uniformity and ABA. The task of this committee is to recommend to the Association what input we should give the ABA on this issue.**INTERNATIONAL ACTIVITIES****1. CMI Activities****A. Singapore Conference**The CMI held its 37th Conference in Singapore from February 11 through February 17, 2001. I led the American delegation which consisted of 28 delegates and alternate delegates from the MLA. The U.S. delegation was one of the largest at the Conference. Those attending on behalf of the MLA in addition to myself were Ray Hayden, Tom Rue, Juan Anduiza, George Chandler, Michael Marks Cohen, Professor Martin Davies, Christopher Davis, Vince DeOrchis, George Fowler, George Gabel, Ray Hayden, Chet Hooper, John Kimball, Howard McCormack, Professor Samuel Menefee, Howard Myerson, Joanne Nagano, John Olson, John Orzel, Paul Poliak, Michael Rosenberg, Gray Staring, Professor Michael Sturley, Alan Van Praag, Kenneth Volk, Jim Whitehead and Frank Wiswall.The four main topics of the Conference were Issues of Transport Law, Issues of Harmonisation of Marine Insurance Law, suggested changes by IUMI concerning general average, and a model piracy law. The U.S. delegation had working groups on each of these topics. The chairs of these working groups were as follows: Transport Law chair, Chet Hooper, vice chairs, George Chandler and Vince DeOrchis; Marine Insurance chair, Graydon Staring; General Average chairs: Howard Myerson, vice chair, Howard McCormack; Piracy chair, George Gabel. The Conference culminated in a plenary session at which various resolutions were adopted concerning each of the major topics as outlined below.(a) *Transport law*.Some of the highlights of the report on deliberations of the CMI Subcommittee on Transport Law are as follows:* •A clear majority were of the view that the type of instrument that the CMI should produce should be a convention, the core provisions of which, including the provisions governing liability on the sea leg, should be mandatory.
* •There was considerable support for extending the period of responsibility to cover inland carriage preceding and subsequent to maritime carriage.

* •With respect to liability there was overwhelming support for a fault based regime, most delegates favoring a regime based on the Hague or Hague-Visby rules, while there was some support for a regime on the lines of the Hamburg rules.
* •With respect to exemptions, there was considerable support for eliminating the exemption for errors in navigation and management of the vessel. This is obviously a significant development and reflects in my mind that the influence of our new proposed COGSA bill.
* •With respect to burden of proof, the consensus appeared to be that the burdens should remain as they are under the Hague and the Hague-Visby rules, with the carrier bearing the burden of proving that it is not liable once the cargo claimant has proved the loss.

In the plenary session, the Conference approved the resolution submitted by the Subcommittee on Transport Law authorizing the Subcommittee to continue the basis of its work and to draft an outline instrument on the basis of the conclusions of the Conference. The resolution further requires that the Subcommittee is to consult with member associations after completing its draft of an outline instrument, obtain comments from them, and revise the outline instrument upon the collection of the replies from the various members associations. It is anticipated that the Subcommittee will have a revised outline instrument in the hands of the member associations sometime during the summer or early fall.(b) *General Average*The discussions pertaining to general average centered around whether or not the CMI should consider proposed revisions to the York-Antwerp rules put forward by the International Union of Marine Insurers (IUMI). There were a number of these proposed changes, the main one being that the scope of York Antwerp rules should be modified to the principle of common safety as opposed to common benefit with the consequent elimination of most of the port of refuge expenses presently accepted in general average. Our position on this subject was that the CMI should not further consider these proposed changes at this time. It has been the long-held view of the MLA that all of these matters were discussed in detail at the Sydney conference in 1994 and in the four years leading up to that Conference, and that there have been no significant developments in the maritime trade in the period of time elapsing since the Sydney Conference to require a review at this time.This view did not prevail, and the plenary session adopted a resolution proposed by the CMI International Working Group requesting that it continue its work and consider what, if any, revisions of the York-Antwerp rules should be made in light of the proposals made by, amongst others, IUMI. We dissented.Subsequent to the conference, the CMI Executive Council concluded that a joint working group should be formed, to include representatives of as many of the involved interests as possible, which would meet in London over the next several months to try to determine and refine the issues with the view of formation of a new CMI International Subcommittee to carry the matter forward to the next CMI International Conference which is anticipated to take place in 2004. Frank Wiswall is to be the chairman of this joint working group. This joint working group will not deal with substantive issues but only organizational matters, setting the agenda for the eventual formation of an International Subcommittee and the consideration of other participants, such as the ICS, Intertanko, Fiata, etc. It is not anticipated that an International Subcommittee would be formed until sometime in 2002.(c) *Model Piracy Law*The Conference also considered the draft of a Model Piracy Law that had been submitted by a Joint International Working Group consisting of representatives of the CMI and other organizations such as BIMCO, ICS, Interpol, IUMI, and others. The delegates were advised that while they could suggest minimal changes to this draft law, because it was the product of a joint working group and not just the CMI, the question would be called on the proposed model law as drafted, with an up or down vote. Despite this there were a number of suggested changes proposed by various parties to the conference, including the U.S. Specifically the U.S. Delegation was concerned,inter alia, with the provision of the model code that the property of innocent ship or cargo owners that was the subject of piracy or acts of maritime violence, and was later used in connection with acts of piracy or maritime violence, was liable to forfeiture to the state, subject to the discretion of the applicable court. It was the feeling of the U.S. Delegation that parties found innocent of any wrongdoing should have such property restored to it as expeditiously as possible unless the state could prove the complicity of the owner in the piracy or acts of maritime violence. In addition, the U.S. Delegation proposed that even if the owner were denied return of its property due to proof of its complicity, the property should be returned to any mortgagee of such property unless the state could prove the complicity of the mortgagee with the prohibited acts. Further, the U.S. Delegation proposed that a provision be added indicating that parties who were found innocent of any wrongdoing under the Model Piracy Law, but whose property had been seized, should not be liable for any costs during any investigation or prosecution for maritime acts of violence or piracy pending resolution of said party's claims to return of the property.The resolution adopted by the plenary conference approved and endorsed the concept of a Model National Law on piracy as a valuable instrument of justice in combating piracy and maritime violence. The resolution approved and endorsed the structure and provisions of the proposed Model National Law, subject to consideration by the JIWG of the points raised by various delegations, including the U.S. Delegation, at the discussions that took place during the Conference. The final draft of the Model National Law is to be prepared by the JIWG and will then be transmitted to the CMI Executive Council, as well as to the other constituent organization of the JIWG. The Executive Council will review the final draft of the Model National Law and, at the earliest possible opportunity, approve the final draft and transmit it to member associations with the request that they apply their upmost efforts to bring the Model National Law to the attention of their governments and urge adoption of same.(d) *Harmonisation of Marine Insurance Law*The discussions on the problems of harmonisation of marine insurance law resulted in a resolution approved by the Conference that endorsed the current study by the CMI International Working Group on the National Laws of Marine Insurance to be an exercise worth continuing from both an academic and a practical perspective, and directed the IWG to continue its study and seek to identify and evaluate areas of difference in various national laws on marine insurance where measures of harmonisation may be feasible and desirable or where, at the least, the dissemination by the CMI of products of the IWG's research would promote better knowledge and understanding of such differences. The IWG is to report on its endeavors periodically to the CMI Executive Council and, thereafter, to the 38thInternational Conference of the CMI.(e) *UNESCO Convention on Underwater Cultural Heritage*At the plenary session of the Conference John Kimball, the rapporteur of the IWG on the UNESCO Draft Convention on the Protection of Underwater Cultural Heritage, delivered a report detailing the problems with said Draft Convention. A resolution was submitted and approved requesting the Chairman of this IWG to continue to monitor the progress of the UNESCO Draft Convention and to seek ways to ensure that the Convention, in its final form, does not conflict with existing international salvage law. The Chairman was requested to explore the possibility of promoting a draft protocol to the Salvage Convention along the lines of one protocol proposed by the late Geoffrey Brice. The resolution also requested that the Executive Council appoint an International Subcommittee to advance its work as appropriate. See further comments on the UNESCO Draft Convention at page 18 of this Newsletter.(f) *Implementation and Interpretation of Conventions*The Conference adopted a resolution approving a draft report on the implementation of the 1976 LLMC Convention as it appears on pages 435-664 of CMI Yearbook 2000 (Singapore I) and recommended that the IWG continue its work on possible measures that may be taken by the CMI to promote uniform implementation and interpretation of international conventions. This included the establishment on the CMI website of a database of decisions by courts of the states of member associations, and other state parties to LLMC, on the interpretation of that convention and other international conventions and, inter alia, the development of standard clauses dealing with implementation and interpretation of international conventions for inclusion in future conventions.(g) *Constitution*The Conference, and the subsequent Assembly, approved the new constitution of the CMI. The adoption of this new Constitution was necessary to provide the CMI with the requisite juridical personality to be lawfully domiciled and to operate lawfully a headquarters in Belgium and to function in accordance with Belgium law. As a part of this process the CMI Assembly adopted a procedure for suspension and expulsion of members, both national and titulary. Interestingly, under these provisions members may be expelled for "conduct likely to bring the Comite or its work into disrepute." I am happy to report that the conduct of the members of the U.S. Delegation in Singapore was more than exemplary, but I leave it to you to infer whether the new CMI procedures for expulsion of members had anything to do with that.(h) *Offshore Mobile Craft*Although not officially scheduled, there was an informal meeting of members of the CMI International Subcommittee on Offshore Mobile Craft, attended by the few of those members of the committee who were in Singapore. For a number of years, our Association has urged the CMI to discontinue the work of this ISC on the grounds that there is no need for a convention on offshore mobile craft. Industry doesn't want it and few, if any, national governments, including the U.S. government, seem to favor it or feel it is necessary. Accordingly, I attended the meeting and urged the chairman, and the other members of the ISC who were in attendance, to advise the Executive Council and the Assembly that their committee should be disbanded. This viewpoint was not shared by those present. Essentially there was a feeling that there might some day be a need for such a convention, and the CMI should be prepared for that eventuality. Additionally, it was pointed out that the matter was still on the work program, albeit at a low priority, of the IMO Legal Committee, and that Committee may call upon the CMI in the future. Interestingly with respect to this last point, when the question arose as to whether or not the matter should be retained on the IMO Legal Committee's work program some time ago, it was the CMI which argued for its retention.In any event, the upshot of all this has been that the ISC on Offshore Mobile Crafts has recommended to the Executive Council that the ISC be closed down, but that a Working Group be retained in existence and continue to work on a draft convention which had been submitted by the Canadian Maritime Law Association, with the understanding that this was currently a low priority item but that, if called upon in the future, the CMI would be in a position to respond promptly.**B. Elections**At the CMI Assembly Meeting following the conference on February 16th, the following were elected to the indicated positions:President: Patrick Griggs for a second termVice President: Frank Wiswall for a second termVice President: Karl-Johan Gombrii (Norway) for a first termExecutive Counselor: Thomas Reme (Germany) for a second termExecutive Counsel: Johanne Gauthier (Canada) for a first termExecutive Council: Professor Feng Li Qi (China) for a first termIn addition, Professor Hisashi Tanikawa was elected an Honorary Vice President and Alex Von Zeigler was elected to another four year term as Secretary General. At the Assembly, President Griggs announced that, although he had been elected for a second four year term, he intended to serve two years of the term and resign from the position at the end of that time.**C. Titulary Members**There were a number of titulary members added at the CMI Assembly on February16th, including three new members from the MLA. Those three are Professor Michael Sturley, Vince DeOrchis, and Larry Bowles.**D. Future Conferences**A number of member associations submitted offers to host the next CMI conference, its 38th, which is expected to take place in either 2004 or 2005. Offers to host have come from Hong Kong, Canada (Vancouver), Spain (Seville), and Greece. In addition, our Association had offered to host the 38th Conference in New Orleans in March, 2004. Frank Wiswall reports that the Executive Council has made a tentative decision to hold a colloquium in Vancouver in September 2002, and to hold the 38th International Conference in Greece in 2004, subject to location and date.**2. IMO Legal Committee**My comments regarding the MLA Cruise Committee, set forth at pages 7-9 above, outline one of the important developments that took place at the IMO Legal Committee in October. The other important development was the finalization of a Draft Convention on bunker liability in connection with the convening of a Diplomatic Convention on same. That Diplomatic Convention will take place in London at IMO headquarters on the week of March 19, 2001. Basically, the Draft Bunkers Convention has the following provisions:* •Establishes liability and compensation for bunker oil spills from non-tank vessels;

* •Provides for the joint and several liability of the "shipowners";

* •Requires the registered owner to maintain compulsory insurance;

* •Establishes the form of insurance certificate;
* •Provides for the right of direct action against the insurer.

The primary issue for discussion at the Diplomatic Conference is the compulsory insurance threshold. Some believe it should apply to vessels of about 300 to 500 gross tons, but others think that 2000, 5000 or 10,000 gross tons is more appropriate. The U.S. position, based on its recovery experience, is that the compulsory insurance provision should apply to ships of about 300 gross tons and larger.Some states think that provisions deleted from this Convention in October 1999, which provided protection for third party responders, should be included in the Convention. The U.S. does not oppose protection for some acts of third party responders. However, it points out that the Bunker Convention was not intended to articulate third-party liability and, therefore, third-party responder immunity should not be included in the Convention. The U.S. supports a resolution pertaining to responder immunity, and it urges states to adopt responder immunity provisions in national legislation.The direct action provision of the proposed Convention is drawing the opposition of the International Group of P&I Clubs, which concludes that the administrative burden of implementing the direct action provisions is without commensurate benefit. The U.S. position will be that the Convention should provide for the right of direct action because it is consistent with the CLC, HNS and OPA '90. This Convention should be complete by the time of our May meeting.Because a Diplomatic Convention is being held in March, there will be no meeting of the IMO Legal Committee this spring. The next meeting of the IMO Legal Committee will take place during the week of October 8, 2001, at which time it is anticipated that the Draft Protocol to the Athens Convention will be completed and made ready for a diplomatic conference.**3. UNESCO Draft Convention on Underwater Cultural Heritage**The next meeting of the joint group of experts considering the UNESCO Draft Convention on Underwater Cultural Heritage will be over the two week period commencing on March 27, 2001. A real effort is going to be made by the group to complete the work at this meeting. A quick look at the negotiating text of the Draft Convention recently received from the Chairman of the Group does not allay our concerns on the approach of the Draft Convention to the Law of Salvage and the property rights of owners, insurers, salvors and others.**ACTIVITIES OF THE PRESIDENT ON BEHALF OF THE ASSOCIATION****1. September 17-20, 2000. Toledo Colloquium.**In early September I attended the CMI Colloquium held in Toledo, Spain, and hosted by the Spanish Maritime Law Association. This was a run-up to the CMI Conference in Singapore and featured seminars on the four major topics to be covered at Singapore. It was an interesting conference which provided helpful and useful insights into what was to be discussed at Singapore, all conducted in the charming setting that Toledo offered.**2. September 25-26, 2000 - Houston Marine Insurance Seminar**.I was one of the speakers at this seminar. My topic was "Historic Salvors, Marine Archaeologists and the UNESCO Draft Convention on Underwater Cultural Heritage." A copy can be found at the Houston Marine Insurance Seminar website, a link to which is on the MLA website. For those of you who are technologically challenged and are in need of some light summer reading (or a substitute for a sleeping pill), I would be happy to send you a copy upon request.**3. October 1-2, 2000 - Arrangements Committee Meeting, Hotel Del Coronado**On October 1-2 I was at the Hotel Del Coronado, San Diego, California, with the Arrangements Committee which was planning for our meeting to be held there on October 15-19, 2001. The "Hotel Del" has never looked better and will provide a spectacular backdrop for our meeting. Chair Tony Whitman and the rest of the Committee have plans that will make this the best of our "away" meetings. The events will include a spectacular theme dinner one night at Sea World, which we will have to ourselves for the evening. Program information and registration data should be available by the time of our May meeting.**4. October 4-5, 2000 - Association of Average Adjusters Meeting and Dinner**.On October 4, I attended a dinner cruise as the guest of Tom DiStefano, the chairman of the Association of Average Adjusters of the United States. It was a perfectly delightful event that provided unparalleled views of the skyline of New York at night. The next day was the annual meeting of the Association at which Jean Knudsen was ensconced as the new chair of the Association. This was followed by a dinner dance that evening where, once again, I was the guest of the Association. All in all, a very pleasant and enjoyable meeting with good friends of the Association.**5. October 6, 2000 -Marine Insurance Claim Association Dinner and Trimar Luncheon**On October 6, 2000, I was the guest of Peter Scrobe, Chair of the Marine Insurance Claims Association, at that organization's annual dinner. Once again it was an opportunity to visit with old and good friends of the Association. Also on October 6 I was the guest at a luncheon hosted by Trimar Defense Services, Inc.**6. October 16-20, 2000 - IMO Legal Committee**During the week of October 16th I was in London as a private sector advisor on behalf of the MLA to the U.S. Delegation to the IMO Legal Committee. See pages 7-9 and 17-18 above for a report on that Committee's activities.**7. November 15, 2000 - Society of Marine Arbitrators**On November 15th, I was the guest speaker at the luncheon of the Society of Marine Arbitrators, Inc. The topic of my address was the Draft Amendments to the Federal Arbitration Act prepared by Don Kennedy and the MLA Committee on Arbitration. At that luncheon we were asked by the Society of Maritime Arbitrators to provide CLE certification in connection with their upcoming Congress of Maritime Arbitrators scheduled for the week of October 22nd, 2001, the week following our meeting in Coronado. I was delighted to accede to this request, and Larry Bowles, the chairman of our CLE committee, is in communication with the Society of Maritime Arbitrators to arrange for this certification.**8. November 16, 2000 - American Institute of Marine Underwriters Annual Dinner**On the evening of November 16th I was the guest of the American Institute of Marine Underwriters, and their president Walter Kramer, at their annual banquet celebrating the 102nd year of their existence. I think our Association has a close rapport with AIMU, and I will do all that I can to continue that relationship.**9. January 10, 2001 - Officers Meeting - Washington, DC**On January 10th we had an officers' meeting in Washington, D.C. At the conclusion of the meeting, as has been the custom in the past, we hosted a luncheon for a number of our colleagues in government service, including the United States Coast Guard Chief Counsel, the Deputy Judge Advocate General of the United States Navy, the Chief of the Maritime International Law Division of the United States Coast Guard, the Chief Legal Officer of the National Pollution Fund Center, and attorneys from the State Department and NOAA. These luncheons, which have become an annual affair, are an excellent way for us to maintain our contacts with our friends in the Coast Guard, Navy, State Department and other government agencies**10. February 11-17, 2001 - CMI Singapore Conference**See pages 11-17 above.**SCHEDULE OF FUTURE MLA AND RELATED EVENTS**1. IMO Diplomatic Conference on Bunker Pollution:To be held in London March 19-23, 2001.2 Quarterly Meeting of MLA Officers and Board: To be held in New Orleans on March 26-27, 2001.3. Biennial Program of the Tulane Admiralty Law Institute: To be held in New Orleans from March 28-30, 2001. The details of this program are contained on our website in the Events Calendar section.4. Fourth Meeting of Governmental Experts On the UNESCO Draft Convention On Underwater Cultural Heritage: To be held at Paris, March 26-April 6, 2001.5. Annual John B. Brown Moot Court Competition:To be held in Newport, Rhode Island, on April 6-7, 2001.6. Annual Spring Meeting of the Maritime Law Association of the United States: To be held in New York from April 30-May 4, 20017. Annual General Meeting and Dinner of the Association of Average Adjusters: To be held in London on May10, 2001.8. Annual General Meeting of the Canadian Maritime Law Association: To be held in Montreal, June 15-16, 2001. This meeting will celebrate the 50th anniversary of the Canadian Maritime Law Association.9. SEALI Annual Seminar: To be held in Orlando, Florida on June 29-30, 2001.10. Houston Marine Insurance Seminar: To be held in Houston on September 23-25, 2001.11. IMO Legal Committee Meeting: To be held in London on October 8-12, 2001.12. MLA Fall Meeting: To be held at the Hotel Del Coronado, California, on October 15-19, 2001.**NOTES OF INTEREST REGARDING MEMBERS**I am sad to say that I must report that since our last newsletter we lost an old and dear friend and former Board Member, Jimmy Kemp of New Orleans, whose untimely death occurred early this year. A testament to the affection and regard with which Jimmy was held was that, at his funeral in New Orleans, every lawyer who had ever worked for him over the years at Phelps Dunbar was present, coming from as far away as California. He will be sorely missed.**CONCLUSION**I continue to be grateful for the incredible support I receive from the members of this Association, the committee chairs, the officers, and members of the Board. I would be remiss if I did not express my special appreciation for all those who attended the recent CMI Conference (as listed on page 11 above) as well as those who did not attend but helped prepare for it, including Jean Knudsen, Bret LeBreton, Larry Bowles, Jonathan Spencer and Richard Stone, who rendered invaluable advice in connection with our preparation for the General Average Issues. Another special word of thanks is due to the chairs and vice chairs of the working groups, Gray Staring, George Gabel, Chet Hooper, Vince DeOrchis, George Chandler, Howard Myerson and Howard McCormack. Mike Sturley, John Kimball and Sam Menefee, as rapporteurs for the Committees on Transport Law, Underwater Cultural Heritage and Piracy, respectively, were important and effective players in the Conference deliberations. So, also, was Frank Wiswall, who led the discussions on piracy and the new CMI Constitution. Despite his numerous CMI duties, Frank was unstinting with his time in providing me and our delegation with the benefit of his years of experience in CMI matters and conferences. His advice to me, a relative rookie in these Conferences, was always on the money. Finally, the organizational skills and usual energetic enthusiasm of the Chair of our CMI Committee, Michael Marks Cohen, was invaluable. As a result of his efforts and thoughtful ideas on most of the topics discussed at the Conference, we were, I believe, as prepared as any delegation could be for the work of the Conference. I know I leaned heavily on Michael for his advice and counsel. In short, all of these members made my job at Singapore an easy one.I apologize for the length of this newsletter, but the activities in which the Association is involved continue to be numerous. Long may it be so.Sincerely,William R. Dorsey, IIIPresidentB0178513.WPD |