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| **Reports (oral) of Standing Committees** |
| **Source:** MLA**Date:** October 19, 2001**Reports of Standing Committees (Oral)**PRESIDENT DORSEY: Thank you, Winston.You didn't know you were going to get a commercial when you came today. Winston is in charge of our directory, and the new directory recently published got out in record time. I think it was published in the fastest time in my memory, and that is almost completely due to Winston's efforts. So, Winston, thank you very, very much. If Tony Whitman is here, could you come up and give a quick report.MR. WHITMAN: Thank you, Mr. President. I have a couple of items to report, but before I go on to those, let me simply say thank you to all of you who have attended in these uncertain times. It makes the effort that the Arrangements Committee has gone to worthwhile to see everybody show up here.We had in excess of 300 attendees and in excess of 250 of those are expected at the dinner dance tonight; so we look forward to seeing you then. The CLE programs, as Winston mentioned, are on the back tables. Feel free to take one even if you don't need it for CLE certification. We'd be happy for you to take those home to those in your firm who may not have been here. It does save us some effort so that we don't have to off-ship everything to Bob Parrish.Secondly, there are changes in the dinner dance seating on account of last-minute no-shows and people who have arrived and people who have changed their mind. So I would urge everyone, please, to stop into the garden room across the way between 3:00 and 5:00 this afternoon when the registration is open to double-check your table assignment because many of those will have changed. Third, a pair of sunglasses was found at Seaworld. If they belong to you-sunglasses in a nice sunglass case-they also are in the garden room, as well as photographs taken by Chet and Stephanie Hooper of the finish line of yesterday morning's fun run. Even if you weren't a participant in the fun run, you will enjoy seeing those photographs which are spread out. Please take the photographs of yourself.PRESIDENT DORSEY: Well, some of us may enjoy seeing those photographs.MR. WHITMAN: There are also, in addition to the ties which Winston mentioned, there are bags, the Coronado bags this year, and other items which are there for sale below cost at this point. Please feel free to stop in.Finally, the officially sanctioned MLA secretarial gift, for anyone who is interested in taking a gift home to his or her secretary, is this lovely porcelain dish which was prepared. It is the lady's gift in your registration package. Comes gift-wrapped already so you can take it on home. It does not say "MLA 2001," nor does the bag, so that they are suitable for gift giving on any occasion. We hope that people will feel free to stop over and pick some up. Thank you very much, Mr. President. (Applause.)PRESIDENT DORSEY: Thank you, Tony. The Arrangements Committee work is always difficult at best, but this year, of course, made even more difficult because of the circumstances, late-minute changes, the uncertainty of things, and what have you. So I think we owe a special debt of gratitude to the Arrangements Committee. I would like to call the names of the Arrangements Committee, and I just ask them to stand in place so we can give them a round of applause after I've announced all the names.Of course, Tony and Susan Whitman; Bob and Forrest Parrish; Geoffrey and Maridy Birkhead; Chris and Lisa Carey; Bobby Glenn; Jeremy Harwood and Mary Ann Cate; Ann Miller; Dennis and Janine Minichello; Jim and Heather Moseley; Doug and Mary Muller; Tom and Mary Russell; Bob and Gail Sanders; Charlie Schmidt and Phyllis J. Kubey; Gerry and Laura White; and JoAnne Zawitoski and Guy Fernandez.Troops, you've done a great job. Thanks a lot. While I'm in the thanks-giving mode, I'd like to say a word about our seminar speakers: Ann-Michelle Higgins, Mark DeLangis, and Dana Henderson, the young lawyers. They did a terrific job, and the feedback we're getting from the attendees at that seminar is quite heart-warming.Jean Knudsen, who came on very short notice, a special word of thanks. A special tribute to our speakers from abroad: David Taylor, Steve Martin, and Derek Luxford. You've added another dimension to our meeting for which we are very grateful. I'm particularly grateful that David Taylor, who was not so sure whether this meeting was going to be in Santiago or San Diego, was able to find his way.Also a word of thanks to Bob Conner and our, what I call, the gang of four-Chet Hooper, Michael Sturley, Vince DeOrchis, and George Chandler-for providing us with very interesting insights on the Carriage of Goods issues. I'm sure those of you from abroad found it interesting to hear about some of the domestic aspects of the industry and how it works and what impact it's going to have. Good news, I think, for CMI-and I think good news for the U.S. Maritime Law Association-because many of the positions that NIT League and the World Shipping Council are espousing, or are going to espouse, follow very closely our COGSA bill.We have here many distinguished visitors from abroad. I can't introduce all of them, but I do want to give special recognition to Patrick Griggs, President of CMI. Patrick, do you want to say anything?MR. GRIGGS: I'd like to, if I may.PRESIDENT DORSEY: Please do.MR. GRIGGS: Thank you very much, Bill. I presume to say a few words of thanks on behalf of your-you've described them as friends from abroad. I think that's a very nice and appropriate way to refer to us. I had a quick count at breakfast time, and it seemed to me there were something like sixty of us here, and I am pleased to speak unofficially on their behalf.It can't have been a very easy decision to go ahead with this particular event so soon after the events of September the 11th. I think you and your Board and the Committee of Arrangements ought to be congratulated on putting together a most successful event.We, the foreigners, have been, as usual, honored to be treated as guests at your biennial conference. I think the high point for me was being on the beach yesterday morning-a rather misty, cold morning-and to discover that I just squeezed past your President on the finishing line, and that there were at least three Past Presidents there, all, at the end, talking and walking. I assume that proves that to be able to walk and talk at the same time is an essential requirement for a President of this Association.Due to increasing age and disability, I was not able to play quite as much tennis and golf as usual, and I couldn't go in for the sailing, but it did mean that I could spend a bit more time at some of the Committee meetings and conference sessions. I must say I was most impressed by these. Whether this is partly due to the need for these confounded CLE points or not; whether that led to the extra quality this year, I'm not sure, but there were some very interesting discussions, and I know that all meetings were well attended.I would just like to repeat what I said at lunch time on Wednesday at the CMI Committee meeting: The U.S. MLA shares the distinction with the British Maritime Law Association of making the highest financial contributions to the CMI. Frankly, without your contributions, we would not exist as an organization. I think it's even more important that I can, I know, rely upon the U.S. MLA always to respond to CMI questionnaires. I know some of these must come as a considerable irritation to you, but if it makes you feel better about them, there are one or two more in the pipeline. We need you: That is really my message.In particular, I do appreciate the willingness of the U.S. MLA to join enthusiastically, and I really mean enthusiastically, in the search for some sort of international harmonization in the field of carriage of goods by sea. I am grateful for the tremendous contribution which you are making to that project.Anyway, I've said quite enough. Bill, many thanks once again on behalf of your friends from abroad. It's been a tremendous week. I've thoroughly enjoyed it, and I know they have as well. Thank you.PRESIDENT DORSEY: Thank you, Patrick.(Applause.)PRESIDENT DORSEY: Also here this morning is the President of the Spanish Maritime Law Association, José Alcantara. José?MR. ALCANTARA: Probably most of you know me, but I'd like to address to you, dear friends, from the MLA on behalf of the Spanish Maritime Law Association and on my own behalf of my family as well. I wish such a capacity to express to all of you in this meeting our most sincere sentiments of sorrow, condolence, and sympathy. You must know that we there in Spain, we support you with true friendship, rather, with brotherhood. I say brotherhood because we there know what terrorism is about.After many years of fighting and suffering, our message to you today is one of courage and of the utmost moral strength. Terrorism is something that no matter the place where it strikes, it's a reaction against civilization. We are nowadays globalized by the struggle against terror. So be sure that you do not stand alone in this war. May this cause unite us more in the future. May this cause lead us to know each other better. We offer you alliance and determination in the struggle ahead. Also, unhesitatingly, we aim at taking our link, our friendship further, so to include in the exchange of activities or even a double membership so that we can share efforts not only in the defense of our lives, but also importantly in the construction of the culture of corporation, uniformity of laws, and international solutions. I have come from too far across the Atlantic and across your immense territory to say this which is our commitment to you. Thank you.PRESIDENT DORSEY: Thank you, José. (Applause.)PRESIDENT DORSEY: Also with us this morning is David Marler, the President of the Canadian Average Adjusters Association. David, would you like to say something?MR. MARLER: Thank you, President Dorsey.Actually, I'm standing in for the current Chairman of the Canadian Association, Peter Boucher of Vancouver, who, unfortunately, could not attend. I also stand in for Jim Gould, the President of the Canadian Maritime Law Association who also, unfortunately, could not attend.We are forever grateful in Canada, with our proximity to the United States, for the hospitality extended to us perennially and, indeed, often many times a year to both organizations.This year I had the pleasure, as President of the Average Adjusters, of being your guest at the Spring Meeting in New York. And, of course, your contribution, which has already been mentioned, to our CMLA 50th Anniversary was much appreciated. I was not aware until this morning of Liz Burrell's involvement in the banner, which we did then proudly unfold, and will unfold at all of our meetings. I think I will take this news back, and henceforth it should have the name: Burrell's Banner.What President Dorsey did not mention is that at the cocktail party in Montreal-and this is our first opportunity to thank you as an Association for that reception-he had arranged for the tall ship, the Pride of Baltimore, to appear off the pier where the reception was held and to fire, whether for him or for us, a salute. When I heard Mr. Bonner's report, I was hoping that the $65,000 deficit was not a result of President Dorsey's initiative in respect of the Pride of Baltimore. I've also been expecting the Pride to appear off the beach at some point, but that has yet to come.This event has, of course, been spectacular. They always are. I wish to echo the remarks of Patrick Griggs and José Alcantara. I won't repeat them, other than to say that the perseverance and dedication which has been demonstrated by your resolve in putting on this event has been magnificent. It is not my place to make a suggestion to the U.S. MLA, which does everything perfectly, but I would be very proud to wear in Bermuda at the 2003 conference, a T-shirt saying "I was at the Del in 2001." Thank you.PRESIDENT DORSEY: David, thank you.(Applause.)PRESIDENT DORSEY: A couple of announcements concerning the sports events on Tuesday. I thought I'd get it in the record who were the winners.The run contest was won by Josh Force, barely narrowing out some older men at the end of the pack. The fishing was won by that old man of the sea, Winston Rice. The sailing was won by ancient mariner Dwight LeBlanc, accompanied by a not-very-ancient mariner, Kristen Weber. A young mariner, I should say.For the golf, I'll call on Richard Sayer and Patrick Griggs.MR. GRIGGS: This is going to be sort of a double-act, if you'll excuse us. (To Richard Sayer:) You take the cup.Ladies and gentlemen, I know a little bit about the history of this cup. It was presented by Don Linet shortly before he sadly died. I think he decided that it should be awarded to a category of golfer on the basis that it was a cup that he would never be embarrassed enough to win because he was a moderate golfer, as am I, and it goes to the lowest gross score.This year the competition has been won by John Carden. I'll just ask Richard to present it to him. I would ask him if he would kindly look after it rather better than the previous winner. It's absolutely filthy. I won't tell you who the previous winner was. Anyway, John Carden, if you're here, would you come forward?MR. CARDEN: I'll take good care of it. Thank you.PRESIDENT DORSEY: Thank you, John. Thank you, Patrick. Thank you, Richard.MR. SAYER: Could I just take this opportunity to say that the golf tournament seems to me to epitomize what the MLA is all about. The camaraderie which you develop here, the multiplicity of skills, the international aspect of it all have made it great fun.President Dorsey earlier this week spoke about the worst of times and the best of times. Being here this week has meant that one has been able to better understand the worst of times from your point of view, but it's also enabled one to experience the best of times because, for me personally, to see the way you've created an example to us as to how to handle tragedy and to feel the warmth of your reception to us all has been very uplifting.This is probably my last MLA. I'd just like to say thank you to you all on behalf of Georgina and me, and may God continue to bless America.PRESIDENT DORSEY: Thank you. (Applause.)PRESIDENT DORSEY: I might just mention some of the other winners in golf. The Swedish Cup, which is for the low net, was won by Christopher Young. First place on the team gross was won by Tim Taylor, Steve Calder, Hal Watson, and Rob Wallis. No surprises there. However, the first place team net, I'm embarrassed to say, was won by Howard McCormack, Jim Moseley, Sr., Ray Hayden, and David Marler. I don't know whether this is a tribute to the handicap system or a vivid demonstration of its defects. Also, I am compelled to announce that the winner of the women's golf trophy was someone named Anne Dorsey. It comes as no surprise to her husband, who is regularly beaten by her anyhow. Tennis finals will be this afternoon. I might just mention who the finalists are. In the women, it's Booty Bowles and Gwen Johnson against Elaine McEwen and Corinna Cresswell. That's an international event.For the men, Alan Kelly, a perennial finalist, and Rob Hopkins against Bertrand Courtois and Jess Webster. That will be at 2:00 o'clock this afternoon.I think that completes my announcements before we go to the Committee reports. We're going to start off a little bit out of order because of people's schedules. We'll start with Ann Miller for the Cruise Lines and Passenger Ships Committee.MS. MILLER: I want to second what you said, President Dorsey, to the speakers of yesterday. That was an excellent program. I also wanted to note that I thought the attendance and attention was excellent. It's rare that in a meeting such as this you see people who really did stay, sat here, listened, didn't go to the back and drink coffee-maybe that's an argument for not having coffee-and also came back after the break for the Young Lawyers who did a particularly excellent job.In putting together the CLE program, our goal was to have people that were not only substantively good, but who were good speakers. I think you will agree that we achieved that. Of course, in doing that, you go to the busiest people, so I want particularly to thank again the speakers of yesterday, and all of you for your attention. Also, I have extra certificates of attendance in case you left yours in your room or didn't sign it yesterday. I'm going to send all of them to Larry Bowles for those of you in states which require a signature of a sponsor's representative. Larry will then send them back to you. If anyone wants an extra copy of the materials of yesterday, we have them in the back as well.Now for the Cruise Committee report, which concerns the Athens Convention.This Convention has been the subject of much discussion over the past three years. A very substantive meeting of the IMO Legal Committee, which President Dorsey attended, took place last week in London. I have seen various written reports, some of which are inconsistent, so I've talked with several people, and I think I've got it right.I think one of the greatest achievements of the Cruise Committee in the last few years was in getting the attention of people that needed to give input in the drafting of this Protocol. It is one thing when a committee of lawyers sits around and considers what we think would be important and an appropriate outcome, but getting the attention, particularly of the industry, was very difficult-not surprisingly, since the people that are leading the industry are not aware of the various legal ramifications from time to time. But we did finally get the attention of the ICCL-the International Council of Cruise lines-and Michael Crye, who is its president. Larry Kaye, who serves as counsel to them from time to time has also done a very good job in being able to present that point of view in order to reach a balanced approach.At the moment, it appears that there will be a diplomatic meeting in 2002 or 2003 when perhaps the Athens Convention will be adopted by the Legal Committee.What is of interest, I think, to those of us in the United States and elsewhere now is that I have been told that the U.S. delegation may favor signing the revised Athens Convention, particularly because of the opt-out provision, which enables signatory nations to opt out of liability limits. Liability limits have been one of the sticking points for years and have prevented the U.S. from signing because of our particular policy in that regard. The liability limits under the Athens Convention are as yet undecided and may be the subject of an intersessional meeting in Spring 2002.The insurance regime is likely to be compulsory with direct action. Again, the limits are, as yet, undecided, but there is a movement to make them extremely high. Stephen Martin addressed that yesterday; so I will not repeat his discussion.At the moment, there will be no punitive damages provided under the Athens Convention.The venue provision will essentially remain as now in the Athens Convention. Place of residence of the passenger, domicile of the ship owner, port of embarkation, port of disembarkation, and leaving to the nations, who may be applicable in those categories, to adopt or not forum selection clauses. For example, in the United States, the *Shute* case, which I think is the most significant case which does allow enforcement of forum selection clauses. The various nations will still be allowed to have their own particular venue, forum selection, and related provisions.Of significance is the strict liability regime for shipping incidents and "defects of the ship" which was the subject of much discussion because in its broadest form, of course, think of a cruise ship. If strict liability for "defects of the ship" were not limited to shipping incidents, a defective hair dryer could be seen as a "defect of the ship," leading to strict liability. The word"defect" has now been narrowed to the maritime operational type-sinkings, groundings, fire, et cetera-in order to avoid strict liability in "hair-dryer" type cases, and appropriately so, in my view. There would be strict liability to a certain layer, a certain limit of damage and then damage to a higher limit, again, subject to the opt-out provision under that for shipping incidents with the reverse burden of proof.As to other incidents, non-shipping incidents, the burden of proof would remain the usual with the plaintiff, or claimant, bearing the burden of proof.There was some discussion about claims for emotional distress without physical injury or the threat of physical injury. That will not be allowed, at least at the moment. Again, nothing is final yet.The general time for bringing claims is two years, which can be extended to three or even five years for injuries that are slow-manifesting.I believe that's it, President Dorsey. Thank you, everyone, and thank you again for your great attendance yesterday at the CLE.PRESIDENT DORSEY: Thank you. Thank you, Ann. Now we will hear from Jim Bartlett.MR. BARTLETT: First, with respect to the Special Committee on Multijurisdictional Practice, following the May meeting of the MLA, the Committee presented to the MLA Board recommendations concerning what I'll call a safe harbor approach to multijurisdictional practice.The Board has considered and has essentially adopted the recommendations of the Committee. Your President then wrote a letter to Mr. Positan, who is the chair of the ABA Committee studying the multijurisdictional practice question. That letter, I believe, went out in June. We have not as yet heard any more from the ABA, and so that's where this matter stands right now. If anyone would like a copy of Mr. Dorsey's letter, please feel free to contact myself or Mr. Dorsey. I've changed firms in the last few months, and Mr. Dorsey and I share a wall because I'm back at Semmes Bowen & Semmes. So one or the other of us will send you a copy.With respect to the Practice and Procedure Committee, we met on Wednesday afternoon. Eighteen members were present. We had a discussion that lasted about two hours on various subjects, the first of which was the *Submersible Systems* case out of the Fifth Circuit, as to which the MLA had been requested to file an *amicus*brief. There was quite a bit of communication between myself, President Dorsey, and Bob Zapf, the Chair of the Subcommittee on Federal Rules and Statutes. Ultimately our recommendations were adopted. The Association declined to file an *amicus* brief in that case.There were discussions concerning electronic filing which is being instituted in many of the districts of this country and some of the resulting problems. Your Committee is watching those, and we will be reporting further on those.The MLA had been asked by the Advisory Committee to the Federal Rules as to whether the MLA had a position on what has been described a technical fix to Rule C(6)(b) that resulted from the recent amendments to that rule. Somehow language had snuck into Rule C(6)(b) that really no one realized how it got in there, I guess. We have a resolution to make this technical fix which can then, if approved, be instructive to the Advisory Committee on the position of the MLA. The Committee voted unanimously in favor of the following resolution with two abstentions, and we ask the Maritime Law Association to adopt the resolution as follows.RESOLVED that the Maritime Law Association of the United States supports an amendment to Rule C(6)(b)(i)(A) and (B) to provide that a person asserting a right of possession or any ownership interest in the vessel must file the statement of such right or interest within ten days of the execution of process or within such time that the court allows, deleting any reference to publication in the context of determining when such statement is to be filed.I move the adoption of this resolution.PRESIDENT DORSEY: Is there a second? (Chorus of seconds.)PRESIDENT DORSEY: Is there any discussion? Any questions that anybody wants to ask about this?MR. DONOVAN: Jim, you refer to a vessel as being arrested. Would this also apply to any arrested property, not just vessels?MR. BARTLETT: Yes.MR. DONOVAN: So should the word "vessel" be changed to "arrested property"?MR. BARTLETT: Well, in the rule, that actually is the way it would read. What we're taking out is the reference to publication. This really brings the rule back to the exact wording the rule was before the amendment that went into effect last year.MR. DONOVAN: Okay.PRESIDENT DORSEY: Any other questions? Ready to call the question? All in favor say aye.(Chorus of ayes.)PRESIDENT DORSEY: Opposed?(No response.)PRESIDENT DORSEY: Then the motion is carried, and the resolution is adopted.MR. BARTLETT: One final subject to advise the membership. The Justice Department, the Asset Forfeitures and Money Laundering Office, AFMLO, has proposed a new Supplemental Rule G. Interestingly, Supplemental Rule G deals not at all with anything having to do with admiralty law. It would deal entirely with forfeitures.The reason that it is perceived-and not everyone agrees with this-but the reason it is perceived that this needs to be in the Supplemental Rules is that the various forfeiture statutes refer to the Supplemental Rules as being the guidelines for forfeitures. There is a need, and we all agree on this, to separate the procedures for civil forfeitures and maritime seizures, so this Rule G has been proposed, and we are monitoring this. We are having input into this, and we will continue to advise you, but it seems that the creation of Rule G, even though, again, it won't deal with any of your procedures, is the way to fix confusion that now exists between these procedures. It is perceived that trying to change the statute would be too difficult; so the idea is to deal with it in the Supplemental Rules. We are watching it very closely because what we do not want to have happen is to have this Rule G on forfeitures have some effect on the procedures we all utilize. This will also require some changes to Rule C at least. Again, we will be having input into this process and monitoring it on your behalf.Mr. President, that concludes my report.PRESIDENT DORSEY: Thank you, Jim. Next will be Don Greenman for the Carriage of Goods Committee.MR. GREENMAN: Thank you, Mr. President.As many of you know by your attendance the other day, the Carriage of Goods Committee sponsored the CLE program on October 17. The topic was the CMI transportation outline document and proposed revised U.S. COGSA. We were pleased to have speakers who were members of our MLA Committee but also are working with the CMI. Michael Sturley, who is the rapporteur of the CMI's International Sub-Committee on Issues of Transport Law, and the MLA delegates to that Sub-Committee, Chet Hooper, George Chandler, and Vince DeOrchis.We also had a telephone hookup with representatives of the National Industrial Transportation League, which is what Bill referred to earlier as NIT League, and the World Shipping Council. These two organizations are trade organizations, the NIT League representing shippers, and the World Shipping Council representing virtually all of the liner operators calling on the United States. They have recently produced a joint statement on the development of a new international cargo liability instrument, dated September 25, and joint comments which were submitted to the CMI.The joint position taken by these two groups is based in large part on the MLA proposed revision of COGSA, but there are some substantive differences, and it is anticipated that our members will have a continuing dialogue with those groups to see if their views can be worked out.Meanwhile, the CMI International Sub-Committee is on a fast track, if you will, to produce a document that can be worked on by the UNCITRAL Working Group next April in New York. There are two weeks set aside for that meeting.With that, I will turn the microphone over to Michael, who may be able to fill in a little bit more about the details of how we get from here to there.PRESIDENT DORSEY: Thank you, Don.PROF. STURLEY: Thank you. For those of you who were unable to attend on Wednesday morning, let me briefly summarize the work of the International Sub-Committee, the International Working Group, and the work that UNCITRAL (the United Nations Commission on International Trade Law) has on its program.You may recall the last time I reported to you was in May. At that time I was shuttling between our meetings and the meetings of the International Working Group, which was producing a new draft of the outline instrument based on the results of the CMI Singapore Conference.That new draft was circulated near the end of May along with a consultation paper. The consultation paper highlighted nine specific topics on which the Working Group was seeking input from national associations and industry groups. We received responses from an impressive number of national associations and industry groups, including the NIT League and the World Shipping Council. As part of the consultation process, the International Sub-Committee also met in London in July, focusing on areas that had not been highlighted in the consultation paper and that had not received as much discussion in previous International Sub-Committee meetings. The responses were due on September 28th. The Working Group then met in Vienna, October 4th through 6th, 2001, went through the responses as expeditiously as possible, and did quite a bit of new drafting. That drafting, I hope, has now been completed. Some of the members of the Drafting Committee were meeting in London yesterday and today, and they should be finishing up about now. That new draft will circulate early next week to all of the national associations and industry groups.Our friend José Maria Alcantara has graciously offered to host the next meeting of the International Sub-Committee which will be held in Madrid next month, November 12th and 13th.At this point it is expected that the International Sub-Committee will take the Provisional Draft Instrument and turn it into the Final Draft Instrument which will then go to the CMI Executive Council for approval before submission to UNCITRAL. Unlike many CMI projects, the expectation is not that this draft will be a finished product ready for adoption, but that it will be the basis for further work by UNCITRAL. Thus, on many issues there will be language still in brackets. There will be different choices presented so that UNCITRAL will be in a position to make the final policy choices.UNCITRAL has indicated that it is very committed to this project. Our meeting in Vienna was at UNCITRAL headquarters, and the UNCITRAL staff participated heavily in these meetings. As Don just told you, UNCITRAL has set aside two weeks for discussion of this project in New York, April 15th to 26th, which is the two weeks immediately before our next meeting. UNCITRAL will then be back at work for a week in September in Vienna, September 16th to 20th. This means that next year, 2002, UNCITRAL will devote three solid weeks to the discussion of this project.UNCITRAL has clearly put this project on the fast track, and we hope that before the MLA treasury is completely depleted, we will have finished something that will be acceptable to the world community.Thank you very much.PRESIDENT DORSEY: Thank you, Michael. I hope so, too. Next Michael Marks Cohen for the CMI Committee.MR. COHEN: Thank you, Mr. President.The primary work of the CMI are issues of transport law, marine insurance, general average, and piracy, and those will be in the reports of other Committees this morning. A tentative CMI colloquium has been scheduled for Vancouver next September, and the next plenary of the CMI is expected to be in 2005, probably in Greece but possibly in Capetown.I just want to mention a few other recent developments in international law which are subjects of interest to our Association that will not be discussed elsewhere this morning.First, there is a new Convention prohibiting certain anti-fouling paints as a danger to marine life. CMI President Griggs at our Committee lunch earlier this week described the new Bunker Pollution Convention. The IMO Legal Committee is working on the problem of places of refuge for ships in distress whose condition or cargos are potentially dangerous. That's the Castor situation.The IMO/ILO jointly are continuing their project on abandoned seamen and how to deal with them. Seems to be they're moving in the direction of a requirement for mandatory insurance.As we speak, there is a UNIDROIT diplomatic conference in Capetown on security interest in mobile equipment. Initially a protocol will be adopted to apply the Convention only to aviation equipment. Then protocols are already in the development stage for aerospace and railway industry application. All three protocols are expected to provide for new international registries. Our Marine Finance Committee is looking into whether the Convention is adaptable for financing seaborne containers and marine equipment, possibly using existing national registries rather than an international registry.Finally, the Hague Conference on Private International Law is still doing some work on an International Judgments Convention, but the outlook is bleak that the United States will join in that Convention if it's adopted, primarily because of foreign opposition to long arm jurisdiction and our attachment remedies.In the alternative, the American Law Institute is drafting domestic statutes to recognize foreign judgments.That, Mr. President, concludes my report.PRESIDENT DORSEY: Thank you, Michael. Dave Farrell for Fisheries.MR. FARRELL: Thank you, Mr. President.I'm pleased to report that sometimes the system works very smoothly. Last spring at the New York meeting under Steve Johnson's and my predecessor, Bill Birkhead's leadership, the Association passed a unanimous resolution to lobby Congress to amend certain provisions of the American Fisheries Act. President Dorsey immediately sent letters to Congressman Dave Obey of Wisconsin on the Appropriations Committee, and Senators Stevens of Alaska and Byrd of West Virginia, and a bill was ushered through Congress and passed by President Bush on July 24th, less than two months after our meeting. I'm not going to bore you with all the details because I know that not many of you have fisheries issues on your plate, but I will say that because of the amendments, you're still going to be able to put fish on your plate.This was a real problem. The American Fisheries Act would have precluded foreign lenders who were defined as preferred ship mortgage holders with less than 75 percent of U.S. citizen ownership from continuing their mortgages. The problem was with entities like Bank America, Caterpillar Financial, and Fleet Capital, which are publicly traded: They are unable to know from one moment to the next the exact citizenship of their stockholders.The Lender Amendments continued until April 2003 the implementation of regulations and, more importantly, allow for a normal FDIC bank to now become a domestic mortgage trustee for these foreign lenders. The Lender Amendments also allow for U.S. vessels that are over 100 feet in length which largely operate in the northwestern Pacific and Alaska to continue their operations without threats to the eligibility of their fisheries' endorsements.We're looking forward in the next several months to working with Pat Wiese of MARAD, who was good enough to attend our meeting, in putting into effect some implementing regulations on the Lender Amendments, and also working with the National Marine Fisheries Service.Next year the original 200-mile-limit legislation, which is the Magnuson Fishery Conservation and Management Act, is up for reauthorization, and there are a number of problems with a case that came out of the First Circuit that Bill Birkhead also has reported to you about, the *Gowen v. Quality One* case, which the Supreme Court recently denied a petition of *certiorari*. There is some serious doctrinal and practical concerns we have with maritime liens on fishing permits as now provided in the Magnuson Act. We're going to be following that very closely, and I hope to be able to report to you on those developments in May in New York.Thank you very much.PRESIDENT DORSEY: Thank you, Dave. Professor Menefee.PROF. MENEFEE: Thank you, Mr. President.The Committee on the International Law of the Sea met, and it was reported that the President had sent a letter to Senator Biden reiterating the MLA's support for accession to the 1982 Convention on the Law of the Sea and offering to testify should hearings be held.We've also received an inquiry from the U.S. Coast Guard concerning the updating of our piracy laws in the aftermath of the terrorist attacks in New York and Virginia. We hope that this may create an opportunity for consideration of the MLA-endorsed Draft Model Law on Piracy.Phil Buhler of the Committee provided a summation of the issues in *U.S. v. Allie B, et al.*, a case which is now under consideration involving damage to a reef in the Biscayne National Sanctuary in which issues of ownership and jurisdiction under international treaties have arisen.Professor John Noyes of California Western School of Law provided an extensive overview of the International Tribunal for the Law of the Sea's jurisdiction and decisions based on his expertise in the area.Finally, Frank Wiswall noted the recent introduction into Congress in the wake of the September attacks of the Mark and Reprisal Act to go which would reestablish letters of mark for use against terrorists.The final meeting of the IMO Joint International Working Group on Uniformity of the Law of Piracy and Maritime Terrorism will take place on December 3rd in London. Mr. President, that concludes my report.PRESIDENT DORSEY: Sam, a question before you leave. I'm not sure I quite heard it correctly. On the inquiry about the Coast Guard on the piracy, where do we stand on the CMI's model piracy law?PROF. MENEFEE: The MLA is already on record at their Bermuda conference on supporting a draft U.S. law. The Coast Guard also expressed interest in the CMI initiative, but that depends upon further work with the Committee. I informed him we would send them a copy of the draft as of Singapore, but certain concerns have been raised at the CMI meeting in Singapore about the matter, and that that was under review and had not been finalized.PRESIDENT DORSEY: Was there any targeted date when the CMI model of piracy law might be completed?PROF. MENEFEE: I believe Professor Wiswall could speak better to that, but it will be sometime presumably early in the new year.PRESIDENT DORSEY: Great. Thank you very much. Matt Marion of Marine Ecology.MR. MARION: Thank you, President Dorsey.The Marine Ecology Committee met this past Wednesday, and discussed recent marine environmental case law and regulatory developments in the United States and abroad.Two particular cases drew the Committee's attention. The first,*U.S. v. Great Lakes Dredge & Dock*, is an Eleventh Circuit decision under the National Marine Sanctuaries Act in which a pipeline owner which had hired tow boats to transport its pipelines was held strictly liable for damage to the Florida Keys Marine Sanctuary caused when the tow boat dragged pipeline over Florida Keys reefs and then grounded.The circuit court's decision is noteworthy in several respects. First, there is very little case law interpreting the National Marine Sanctuaries Act ("NMSA"). Thus, the appellate court provided some basic guidance for practitioners interpreting the statute. Specifically, the Eleventh Circuit construed NMSA's third party defense narrowly, rejecting Great Lakes' contention that it could not be held strictly liable for a third party tow boat operator's negligence, at least where the tow boat was acting under Great Lakes' orders. In addition, the Eleventh Circuit reversed the district court and reinstated the federal trustee's primary restoration plan, extending significant deference to the trustee's determination about the methods for addressing natural resource damages.In a second noteworthy case, *BEC Corporation v. The Connecticut Department of Environmental Protection*, the Connecticut Supreme Court expressly adopted the responsible corporate officer doctrine and imposed personal liability on a corporate president and vice-president in a tank farm pollution case. The basic rule announced by the state supreme court is that where a corporate officer has responsibility over a particular environmental practice and fails to act, he or she may be subject to personal liability. We think this decision reflects a trend, and has obvious implications for marine environmental casualties.On the regulatory side, we discussed federal regulations by NOAA, the EPA, Fish and Wildlife, and the U.S. Coast Guard covering areas ranging from recreational boat air emissions, the designation of critical habitats, and natural resource damage assessments, all of which fall within the extremely broad ambit of our Committee.The Committee had a lively discussion about NOAA's proposed amendments to the Natural Resource Damage Assessment ("NRDA") Regulations. Comments on these regulations are due on November 5th, and the main issue for our Committee was whether or not it would be appropriate for the Committee to draft a comment for submission to the MLA Board and possible submission in the rule-making proceedings.The rule-making itself addresses several issues in NOAA's original NRDA regulations. Specifically, the proposed rule addresses whether a Natural Resource Damage trustee has the authority under OPA to conduct oil spill removal activities. OPA clearly delegates that authority to the federal on-scene coordinator, and NOAA concedes this point. However, in this current rule-making, NOAA argues that OPA always intended to authorize the trustee to eliminate or reduce pollution exposure as well. Thus, NOAA proposes eliminating the word "remove" from the existing regulatory description of the trustee's authority and substituting the more expansive term "address," albeit without purportedly changing the existing authority of the environmental trustee. In addition, NOAA proposes adding new criteria for emergency restoration activities by the trustee and amending the NRDA regulations to include NOAA's legal costs, both direct and indirect, under the rubric of "assessment costs." Thus, under the proposed regulation, if NOAA were forced to litigate a natural resource damage claim, they would be permitted to recover their litigation costs as part of their "assessment costs."The consensus of the Committee was that formal comment in NOAA's rule-making by the Association would serve no purpose. Ultimately, in the Committee's view, the courts rather than NOAA will have to construe the federal trustee's spill response authority and the legality of including litigation costs within the definition of assessment costs in light of OPA to determine whether the proposed regulations are permissible.In conclusion, we covered several topics on the international front and received an excellent report by a friend and guest of the Committee, Derek Luxford, from Sydney, Australia. Thank you.PRESIDENT DORSEY: Thank you, Matt. Sandy Knapp.MS. KNAPP: Thank you, Mr. President, members and guests. I have a short report. I just wanted to get you up to date since the last meeting. At that time I reported that we were following various legislative and rule-making proposals. We continue to monitor those developments, and now there are additional ones by MARAD and the Coast Guard. I'll name one, which is the Coast Guard's request for comments on the term "sold foreign" and their treatment of vessels owned by entities that have become noncitizens because of some technicality as the term is used.We also had a report from Graham Charnock of Findlay & Tait, on recent developments in South African law. It was very interesting. Also from Steve Johnson of Garvey Schubert & Barer in Seattle regarding the American Fisheries Act which our colleague already discussed this morning.Ed Powers of Norfolk gave us an update on the status of the fishing rights cases and whether they are appurtenances to the vessel and how that affects maritime lien law.In the yacht financing area, we had a discussion, and we've decided to work with President Dorsey and the Board in contacting the appropriate officials at the Coast Guard to address four yacht financing initiatives that are primarily related to fraud in that area.These four areas are, No. 1, consolidation of builder's certificate and manufacturer's certificate of origin into one form; No. 2, requirement of a hull identification number for U.S. federal documentation purposes; No. 3, requiring the surrender of a state certificate of title if issued before federal documentation; and, No. 4, requiring the holder of a preferred mortgage to discharge the mortgage of record directly when the loan is paid off. I spoke with President Dorsey after our meeting, and I'll be working with him closely in the next few months to work with the Coast Guard.Lastly, I'd like to mention that Marjorie Krumholz of Thomas Coburn, who unfortunately couldn't attend our meeting from Washington, D.C., spearheaded our effort on the Title 46 Recodification Project. We had quite a few sections assigned to us, and our Taxation and other Subcommittee members did a great job. Ms. Krumholz pulled it all together. I'd like to thank her for her effort.That's it, Mr. President. Thank you.PRESIDENT DORSEY: Thank you, Sandy. Jean Knudsen.MS. KNUDSEN: Good morning, ladies and gentlemen.The Committee on Marine Insurance and General Average met on Wednesday, and we reviewed various ongoing projects, legal decisions, and topics of interest.We prepared a newsletter which is available at the back table. The Committee and I wish to extend our congratulations to Howard McCormack as the incoming Chairman of the Association of Average Adjusters.Congratulations, Howard. We've established a working group which is going to be chaired by Howard McCormack to work with the CMI General Average Committee which is considering a proposal to revise the York-Antwerp rules.During the past year as Chairman of the U.S. Association of Average Adjusters, I've had the pleasure to attend both the fall and spring dinners as a guest of the MLA, as well as the board luncheons. I wish to thank the Association for its kind hospitality. Thank you.PRESIDENT DORSEY: Thank you, Jean. Jay Paré.MR. PARÉ: Thank you, Mr. President.Speaking on behalf of Don Kennedy for the Arbitration and Mediation Committee, last May we ran a program on manifest disregard of the law and how that might make available a challenge to an arbitration award. It was a spirited debate. It was something that was moderated by Don Murnane. I understand that he has written an article in *The Advocate* which is available here somewhere. I did not see it in the back of the room, but if anybody is looking to read that, if you just see Manfred Arnold, he can hook you up with a copy.As has already been mentioned, over the summer the Committee wrote an *amicus* brief on behalf of the Maritime Law Association on the subject of whether a fixture sub details created a binding contract or not. The Association has taken the position that it's essentially a question of fact and urged that that approach be taken in the Second Circuit. There's been no decision yet on that case.A third item that we have been doing on the Committee is that we have been involved in the drafting of amendments to the Arbitration Act. Specifically we have some ideas, such as bringing back consolidated arbitration, which has been removed since the*Boeing* decision, and also providing an amendment that would permit nationwide subpoena process for the arbitrators. The AAA has decided not to assist us in that regard, and so we are essentially going it alone, and we trying to determine how to effect that goal. Those amendments would only apply to maritime arbitration and not any other type of arbitration.Fourth, let me just say a word about mediation. It's been suggested earlier in the week that perhaps we're behind the curve with respect to some other unnamed arbitration centers. We prefer to take the view that our arbitration system is working quite well and there's perhaps less of an urgent need for mediation, but, nevertheless, the Committee actually is the Committee on Arbitration and Mediation of the Maritime Law Association, and we have been actively pursuing programs on mediation. In fact, we have, as a result of the meeting here today-or yesterday, actually, come up with the idea for another program perhaps next May.That's the end of my report.PRESIDENT DORSEY: Thank you, Jay. Jay was on very short notice the lead lawyer in preparing our *amicus* brief in the *U.S. Titan* case. A very, very tight schedule. He did a great job. Thank you very much, Jay, for that. So, Dennis, if you're ready. This is the Coast Guard and Navigation Committee. Dennis also is the Chair of our Special Committee on Recodification of Title 46.MR. BRYANT: Ladies and gentlemen, the Navigation, Coast Guard and Government Regulation Committee met on Wednesday. We were honored to have with us Pat Wiese who is the acting chief counsel for MARAD.I'd indicated a year or so ago that I was going to work to try to bring other federal agencies that deal with maritime issues into involvement with the MLA, and Mr. Wiese is the first who was able to take us up on this. The FMC was going to attend and then discovered that coming to Coronado would break their budget, but we're going to try to get them to New York in the Spring. Mr. Wiese gave us a very good overview of what the Maritime Administration does and how they interact with ship owners.We discussed criminal liability, a growing problem. It seems that federal agencies are much more prone to invoke criminal sanctions in maritime cases than they ever were in the past, and it's becoming a serious problem, and it's impacted other areas, such as marine casualty investigations. In the *New Carissa* case in Oregon, the U.S. Attorney threatened to prosecute the master for the oil spill. The master took the Fifth Amendment and refused to cooperate during the Coast Guard's marine casualty investigation, and the investigation largely went nowhere.Port security. In the post-September 11 environment, port security is a major issue. The Coast Guard has promulgated a new 96-hour advance notice of arrival. Additional information is required. Many more restrictions being imposed. As we know here in San Diego now, the Coast Guard puts armed boarding parties on all deep craft vessels coming in and out of port. Hopefully the process will get smoothed out in the near future, we'll have a more uniform system from port to port, but right now it's causing our clients some difficulty, and we hope that will be resolved soon.We discussed the exclusive tug arrangement problems in the lower Mississippi River and in Florida, and the FMC's investigations into those. It bears close watching.Then the growing role of state governments and the EPA in the maritime environment. There were many who thought that with the *INTERTANKO* decision a year ago that the states would pretty much be out of the picture on the maritime side. Absolutely untrue. They shifted their focus from trying to control operations on the ship to just defining everything as an emission and attacking it from the environmental side, and the EPA is doing pretty much the same thing.Changing the focus to the Title 46 Recodification Project, first of all, I want to express my appreciation to all the Committee Chairs and other Committee members who worked hard to submit comments. Hal Watson helped consolidate all that stuff. It's sitting on my desk. I have not finished consolidating it yet. It's solely my fault. I hope to have that done soon, but I can also say that the federal government is also behind the time line for various reasons, including the September 11th issue, and the fact that this whole project is being driven largely by the assistant general counsel in the Department of Transportation who is having trouble keeping the interest level up in the other federal agencies, to say nothing of Congress. So while he initially had a very ambitious time schedule, that has also fallen victim to all this stuff. It's going clearly to be a multi-year project, but he very much appreciates and values our input, and so we are going to continue the process with him but expect that it's going to be an interlude process that we will provide comments on this version, he will make adjustments to the proposal and send it back out for re-review probably in the spring, but we don't know exactly when.That finishes my comments.PRESIDENT DORSEY: Thank you, Dennis. Proctor Admissions, Warren Marwedel.MR. MARWEDEL: Mr. President, members, as you heard this morning, we have five new proctor members. I wanted to ask all of the proctor members that are here to go back to their offices and encourage the associate members of their offices to apply. Being a proctor member is one of the requirements for any of the leadership positions in the organization. More importantly, when you become a proctor member, your dues do not go up; so there's no cost to it. Thank you.MR. STORZ: Thank you, Mr. President.The Salvage Committee had an interesting meeting on Wednesday. We got into recent cases and also the role of salvage master during complex salvage operations. We dealt at length with the draft UNESCO Convention on Underwater Cultural Heritage. I'm not going to repeat what's already been said. I will say this, though. I think a lot of people thought that the Convention was a dead letter because the Convention obviously enlarges coastal state competence over areas, including the exclusive economic zone, the continental shelf, and in certain cases states that have a cultural link with a particular cultural heritage will have enlarged authorities and competence over activities taking place in the deep ocean within the area. Many people thought that was a dead letter because it did conflict with the Law of the Sea Convention. I made some phone calls last week, and I will tell you that it's not completely clear at this point whether the United States will accede to the Convention or, in fact, not sign it. So that may be a little bit of news to you all.Thank you very much.PRESIDENT DORSEY: Let me ask you a question on that last point, Bill, because the United States delegation at the Meeting of the Joint Experts did express its dissatisfaction with the Convention as currently drafted: Do you know whether or not there have been any changes in the Convention since the Meeting of the Joint Experts and now?MR. STORZ: No.PRESIDENT DORSEY: Okay.MR. STORZ: There haven't been any changes that I'm aware of. However, the United States government's position is one that is based on a number of different governmental agencies. Their interests are all very different. The bottom line is there was concern and perhaps some unhappiness with the terms of the Convention, but what I heard from people at the State Department was they didn't come right out and say they wouldn't sign it. What they said, instead, was "We don't think this is in a form that the Senate will ratify." So that's a little different than saying, "Hey, there's no way we're going to sign this."PRESIDENT DORSEY: Okay. Thank you. Larry Kahn for Young Lawyers.MR. KAHN: Thank you, Mr. President. The Young Lawyers met a couple days ago with two goals in mind: to discuss ways of increasing membership and increasing participation, recognizing that in many ways these two goals are going to be linked together. We decided that there are several areas that we needed to improve.One was to resolve an ambiguity that appears to have arisen with regard to how many Committees a Young Lawyer member is allowed to join. It had been the general understanding that we were permitted to be members of two Standing Committees in addition to Young Lawyers, but that appears to be simply an understanding and not actually something official. We've discussed ways of resolving that ambiguity, one of which may be a proposal to amend the bylaws, but we've yet to decide on a final method of resolving this difficulty.We also decided to better define our internal guidelines with regard to membership to, among other things, facilitate our mailing list, but also to correct some, perhaps, aged language in our membership descriptions to make it more modern and gender neutral, to strike things that would require Vice Chairs to have, for instance, facial hair, et cetera.We also decided, importantly, that one way to increase and inspire new membership and more active participation would be to have smaller regional meetings that the entire Young Lawyer membership would be invited to but only local members would be expected to attend. These smaller meetings would be educational in nature or social in nature, or hopefully both. The first of these is going to be this Monday in New York. It's going to be a presentation on South African law, and that will be at Freehill's office, and we're expecting hopefully a number of Young Lawyers will attend that, and we will continue from there. We hope that by having these smaller regional meetings, we will be able to inspire participation from either Young Lawyers who are not currently all that active or inspire membership and participation from firms that don't currently support the MLA as much as we would hope they would. We think that by presenting important programs that are educational and social would help us accomplish our goals.Finally, we enjoyed participating in the CLE program here. We've received a lot of very positive feedback, and we appreciate that. We hope to continue being invited to participate in these CLE programs.With that, Mr. President, thank you.PRESIDENT DORSEY: Thank you, Larry. I can assure that you will be continue to be invited to do just that. I also want to say that one of the Young Lawyers projects that they've got going now is the indexing of our prior proceedings. That's a Herculean task, quite frankly. It's going to take a long time, but once we get it completed, it's going to be very worthwhile.The last report will be Bob Parrish, who will report on Planning and Arrangements for our Fall 2003 Meeting.MR. PARRISH: Thank you, Mr. President.I'm pleased to announce what I think many of you know, which is that our meeting in 2003 will be in Bermuda. We are going to return to the Southampton Princess which is now operated by the Fairmont chain. They have put in approximately $25 million in renovations, and we're very excited that their facility will be splendid for us to attend. The dates are Wednesday, October 29ththrough Saturday, November 1st, 2003.I want you to pay particular attention because what the Board has done, the President has, is it's shifted from a Tuesday start to a Wednesday start with a Saturday finish as opposed to a Friday finish.So Wednesday, October 29th, through Saturday, November 1st. You will hear more from us.Thank you, Mr. President.PRESIDENT DORSEY: Thank you, Bob.Before I call on Nick Healy for the final motion, I'd like just to comment on the fact that the format we've used for this meeting is different from other meetings in that we had sports day on Tuesday and then our business sessions from Wednesday on. I'd like to get some feedback on that to see what those who came here think about that new format. You have heard from Bob that we're going to carry that new format forward a little further next time by moving the business sessions up to Thursday through Saturday.Well, that completes the Committee reports, and Past President Nicholas J. Healy, would you like to make a motion?MR. HEALY: Mr. President, honored guests, and fellow members of the Maritime Law Association, I think it was very appropriate that the business end of this fall meeting commenced with a very touching memorial service conducted by President Bill Dorsey, Membership Secretary Winston Rice, and Bette Cohen. I think that it may also be appropriate to close this business end of the fall meeting in memory of those who died in the awful attack on America which occurred on September 11th.So without more, Mr. President, I move that the meeting be adjourned in fond memory of Maureen Olson, Glenn Winuk, and all those relatives and friends of members who perished as a result of that event.PRESIDENT DORSEY: Is there a second to that motion?(Chorus of seconds.)PRESIDENT DORSEY: All in favor?(Chorus of ayes.)PRESIDENT DORSEY: The ayes have it, and the meeting is adjourned. Thank you very much, ladies and gentlemen, and thank you, President Healy.(Time noted: 11:26 o'clock a.m.) |