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| **Reports (Oral) of Standing Committees** |
| **Source:** MLA**Date:** October 1, 1999**REPORTS OF STANDING COMMITTEES (ORAL)**We now will start the Committee reports. I call first on Vince De Orchis, the Chairman of our Carriage of Goods Committee, to give us a report on very interesting activities that have taken place and the extraordinary work this Committee has done.MR. De ORCHIS: Thank you, Mr. McCormack.Mr. President, officers and members of the Association, ladies and gentlemen, good morning.Yesterday the Carriage of Goods by Sea Committee met in a much sunnier climate in order to discuss the status of the COGSA proposal. I want to start off by pointing out that the COGSA proposal is still a proposal. It is sitting with the Senate staff and is not expected to be introduced until January of this year when the Congress reconvenes. That is the promise of Mr. Robert Freeman who is the majority staff member of the subcommittee for the Senate.However, there have been developments over the past four or five months, in large part due to the fact that many members responded to my request at the May 1999 and asked their clients to write to Congress to try to move this bill along. Because it is a proposal for industry, many of the clients did write in, and as a consequence of that, Mr. Freeman organized a meeting in August inviting various industry representatives to explain their views on the COGSA proposal.At that meeting in Washington D.C., which in large part was due to the assistance of the National Industrial Transportation League (NIT League), there were representatives also from the AIMU, American International Freight Forwarders Association, APL, the American Waterways Operators, Sea-Land, Crowley, International Federation of Freight Forwarders, The National Industrial Transportation League, Transportation Consumers Protection Council, Transportation Mediators Association, Propeller Club, and, of course, our own organization, the MLA.The bottom line of that meeting was that Mr. Robert Freeman remarked that he was unaware until now of the strong industry support for the COGSA proposal and that he was unaware that there was uniformity amongst the participants who were there for having this proposal brought into enactment. As a direct consequence, Mr. Freeman asked that we do three things: One, prepare a summary of the proposal. That has been done through the assistance of Past President Chet Hooper. Secondly, he asked that a letter be provided to the Senate listing the industry supporters for the proposal. That was done through the assistance of NIT League. Lastly, he asked that we work out the minor modifications that were still remaining on the bill. That has now been completed.The latest revision of the draft COGSA proposal was issued about two weeks ago. It is number 6A. Copies of it were handed out at my meeting yesterday. If anyone here would like a copy, please write to me or give me a call and I will send you a copy. I am making arrangements with Mr. Winston Rice to put the COGSA proposal on the webpage.There have been some minor modifications at the request of the American Truckers Association, the American Railroad Association, the AWO and FIATA. I assure you, together with Past Presidents Moseley and Hooper, and Professor Sturley, that those modifications are, for the most part, nothing more than window dressing. It did not change the original intent or spirit of the proposal that was passed by membership of this organization. If there is a significant change, it is only with respect to the arbitration provision which has been revised for lack of support. Furthermore, it created a concern to Mr. Freeman who has received the greatest number of complaints regarding that particular provision. To explain, the original provision provided that a foreign arbitration clause in a bill of lading can be enforced at the election of the shipper or cargo owner here in the United States. The problem with such a provision is that it may run afoul of the New York Convention, as well as create problems of enforcement. There is also the problem of mechanics: How you operate an arbitration proceeding when the foreign arbitration clause is set aside?Other than that, I do not believe that there are any substantive changes in the modifications that have been made to the proposal. However, I think to be realistic, this Association has to recognize that between now and whenever this proposal becomes legislation, there will be other modifications sought by other industry interests. The Association has to be prepared to meet with those industry groups to try to keep the proposal as close as possible to the original intent and spirit of the proposal that was passed in April of 1996. It was for this reason that the resolution was passed by the Board of Directors on Monday of this week.At this point we are simply sitting back. We have done all that has been requested of us by Mr. Freeman. Everything is ready to go. Hopefully, Mr. Freeman will stick to his promise and in January we will see the proposal finally introduced. How long it will take for the proposal to be enacted after that, I really don't want to make any more guesses. I would assume it would take close to a year before it could reach any form of enactment. Then, as you may recall, the proposal itself provides for a period of time before it actually goes into force.Let me also point out at the CoCog meeting we had the good fortune to hear from Mr. Lindsey East, a partner in Richards Butler office in London, who spoke about antisuit injunctions. I might make a comment here that we in the United States have been criticized for our extra-territorial grasp with respect to the COGSA legislation. However, it strikes me that London has done the same with their antisuit injunction provision, as well.Lastly, I commend everyone to the Cargo Newsletter, No. 36A, which is on the back table. It was produced by Mike Ryan and others on the Committee. I do thank all of my Subcommittee Chairmen, and Vice Chairman Bob Connor, for assisting me through this year and getting us as far as we have on the COGSA proposal.Mr. McCormack, thank you very much.PRESIDENT McCORMACK: Thank you very much, Mr. De Orchis. Before Vince leaves I want to express the thanks of the officers and the Board to Vince, his Committee and to the steering group for the fantastic amount of work that they put into this COGSA project since it was voted on in May of 1996. I haven't been part of that activity, but I can tell you that the E-mails, the business of Washington, the provisions, the drafts, meetings, et cetera, that have gone on over the last three years and particularly over the last few months as we deal with the Senate staff on the rewriting of the draft are due to fantastic efforts of Vince, his Committee and the steering group for the fact that they've come this far.We are at the door of the Senate as we speak as far as I'm concerned. I believe that we will indeed have this Bill before the Senate in January. I am also very optimistic about the prospect of its success. As Vince indicated, this bill is no longer in the hands of the MLA. We do expect that there will be some possible other comments, et cetera, by others and there may be additional language that may ultimately find its way into the bill. But I can assure you that Vince's Committee and the steering group will be keeping a very watchful eye on this project. I think that by the end of next year my successor will have, hopefully, good news and the conclusion of a lot of great effort. Thank you very much.I now call upon the ADR Committee, Harvey Wittenberg, for his report.MR. WITTENBERG: Good morning, President McCormack, officers and members of the Board, guests and members of the Association. This is a report of the ADR Committee.The ADR Committee met on Tuesday, October 12th. The participants engaged in an opinionated and a spirited discussion on the subject of the MLA publishing a directory of mediators. At the conclusion of the discussion the Committee unanimously seconded and passed the following motion:The ADR Committee recommends to the Board of Directors of the MLA that there be a directory of mediators published on the MLA website. The directory will be open to all members of the MLA who are interested in offering their services as mediators. A listing in the directory will not be considered an endorsement by the MLA. The ADR Committee will develop the final format for the directory and will welcome input from all MLA members.At this time the ADR Committee anticipates that the format for a listing in the directory will contain a brief autobiographical sketch of the member, the member's mediation experience and training and possibly the member's areas of legal expertise. The ADR Committee will consider revisions of the directory's format based on input from users of the directory.Neither the ADR Committee nor the MLA will take on the responsibility to authenticate or verify the information provided by the member on his or her individual listing in the directory. The correctness and completeness of the information in each individual member's listing will be the sole responsibility of that member. Each listing member will be encouraged to periodically update his or her webpage information.Each member's webpage in the directory will encourage all users of the directory to conduct their own further inquiry about the member listed in the directory and not necessarily to rely on the directory as their sole source of information.The ADR Committee recommends that the MLA charge a nominal fee for a listing in the directory.Pat, I thought you'd like that recommendation.The amount and frequency of the fee will be determined after further input and discussion.Lastly, the directory will be provided as a source of information and as a service to those in the maritime and other communities who want access to this information.It is respectfully submitted by the ADR Committee that the Board of Directors accept and approve this motion and authorize the ADR Committee to proceed with implementing a directory of mediators.I personally would like to thank all the members of the ADR Committee, those who participated in the meeting and all of those who have helped the ADR process and the ADR Committee to achieve this goal.That is the report of the ADR Committee. Thank you very much.PRESIDENT McCORMACK: Thank you very much, Harvey. In view of the fact that this resolution has just come before us, I will defer any action on it at the moment. I will then put it before the Board of Directors in a special session, followed by a letter, I hope, as to the various things that come up before the Board meetings. I do need, however, a full copy of that resolution and I expect to have some activity on the resolution hopefully one way or the other within the next month.MR. WITTENBERG: Thank you very much.PRESIDENT McCORMACK: I would remind everybody when it's your turn to speak that you give your card to the reporter. Also, any of you that may have been late or in and out that you sign up in the back, if would you, please.The next Committee report will be that of the International Law of the Sea Committee. That will be given by Larry Brennan.MR. BRENNAN: Good morning, Mr. President, members of the Board, Officers, guests, fellow members of the Maritime Law Association.The International Law of the Sea Committee met on the morning of Tuesday, October 12, and we are pleased to report that we discussed and explored the following subjects:The U.N. Law of Sea Convention of 1982 status remains the same as before. Unfortunately, it appears to be dormant in the Senate committee and we have no expectation as to when any action, let alone any favorable action, will be taken by the committee chair, Senator Helms.The President in early September issued a proclamation in conformity with the Law of the Sea Convention, which, of course, has been recognized as customary international law. Again, President Clinton cited that as the basis for proclaiming a contiguous zone of 24 nautical miles from the base line. In essence, this is an extension 12 miles beyond the territorial sea of a contiguous zone which is recognized and established under the '82 convention. With the exception of where the contiguous zone will impact upon claimed waters of foreign states, such as in the Bering Sea and the famous "Donut Hole," you can calculate an area of 12 additional nautical miles from the end of the claimed territorial sea, or generally a total of 24 miles from the base line.We also addressed UNESCO's Archeology Commission and the proposed treaty which is generally opposed by the membership of this organization. There has been some support in the U.S. delegation. However, we believe that from the proceedings that UNESCO has reported to us that that organization favors the adoption of the treaty without full input from the U.S. It appears that the position of the U.S. now will be to not join, not to sign or ratify the UNESCO Archeology treaty as it has significant and adverse impact upon the interest of the clients whom some of our members represent.We talked about the piracy problem, how it continues to be a significant issue, particularly in the Southwest Asian area, what efforts are being undertaken and what additional efforts need to be undertaken to address the problem on a national and international basis. We recognize that this organization has been in the forefront of proposing legislative action to address piracy.We talked about two recent salvage cases, even though Jim Shirley's Committee is far more adept to address salvage, because these cases have an international tone as they both address questions of sovereign rights in vessels and aircraft. One is the recent issue of the Japanese submarine I52 which was sunk in the Atlantic Ocean in June 1944 and has been a subject of an article in this current month's*National Geographic* magazine and a television special. That submarine apparently was carrying gold cargo from Japan to Germany when it was sunk. The salvors have located it, recovered some property, not including the gold but other metals and opium, and photographed her.The second case, from a the U.S. District Court, is somewhat different than all other cases involving claims by the U.S. government to lost and abandoned military aircraft or vessels. This is a World War II Navy aircraft. In this case, which is now on appeal, I believe, to the Eleventh Circuit, the Court ruled that the salvor has a right, despite the Government's objection, to preserve the property. In other words, the salvor has succeeded at the district court level in obtaining a salvage interest in a government aircraft, notwithstanding the general rule that the United States, as sovereign, is assumed not to have waived or abandoned property absent an express act.Finally, we discussed, without much resolution, the necessity to address the issue of repatriation of seafarers particularly on ships that are abandoned, particularly after arrest. The proposal from the Seaman's Church Institute that those who are providing for those seaman either in terms of a supplement while they're serving on board ship or their cost of repatriation should be afforded a super priority from the proceeds of the arrest and sale of a vessel. They also recognize that sometimes that is not a practical answer as the vessel does not warrant the cost of arrest. So we discussed that without any further resolution.That concludes my report, Mr. President.PRESIDENT McCORMACK: Thank you very much, Mr. Brennan.We'll now resume with the various Committee meeting reports. I now call upon my partner Matt Marion for his report on the Marine Ecology Committee.MR. MARION: Thank you, President McCormack, officers, guests, members of the MLA.The Marine Ecology Committee met for two hours on Tuesday afternoon and discussed a broad range of federal and state jurisprudence and statutory and regulatory developments.We have three ongoing projects for which we formed internal working groups. The first involves a summary of state marine pollution laws. That's a daunting task, as most of you know, and as anyone involved with the *INTERTANKO* jurisprudence can certainly appreciate. That group is headed by Laurie Sahatjian of Washington D.C. Laurie has prepared a draft summary of current state laws which the Committee hopes to make available in appropriate form to the MLA membership. This brings us to our working groups concerning the Marine Ecology Committee's newsletter and Committee's website headed by Laurie Frost Wilson, my Vice Chair. We are looking for an appropriate forum for disseminating the considerable good work of the Committee. We do have quite a bit to share in terms of information. Our working groups, with the assistance Winston Rice, are trying to develop a suitable format for disseminating that information on the MLA's website.As regards current litigation, we received reports on *INTERTANKO*, which, as you know, has received the *certiorari* grant and is proceeding to Supreme Court. We also received reports concerning the *Tampa Bay* litigation, the reinstatement of Maritrans' Fifth Amendment takings case, a recent seaworthiness decision involving Mobil Shipping and Trading issued by the Southern District of New York, and several other litigations.We discussed a number of recent federal legislative and regulatory developments. One particular area of growing concern to the Marine Ecology Committee is the ballast water management program being administered by the Coast Guard and by at least one state. The Coast Guard issued NVIC 8-99 defining both voluntary and mandatory aspects of the ballast water management program. We expect that this area will grow significantly in the coming years and also envision that what is voluntary now may well become mandatory in the future. In fact, the state of California now has a mandatory ballast water management program which raises many of the concerns addressed in the *INTERTANKO* litigation, since it exemplifies a state regulating an area that the Coast Guard is also attempting to regulate.The Committee also received a report by Derrick Luxford, a solicitor at Phillips Fox in Sydney, Australia, concerning a recent oil spill in Sydney harbor. Mr. Luxford gave his views on the likely impact of that spill on Australian law and while he doesn't expect an Australian OPA, he cautioned us about the possibility of some legislative changes as a result of the spill.Finally, we received reports on the subject of marine criminal and environmental liability, including recent findings by a Special Subcommittee headed by Fred Kuffler. The Subcommittee issued a questionnaire to various maritime law firms around the country seeking input comparable to the information sought by the Coast Guard in an identical questionnaire being circulated to its Captions of the Ports. The Subcommittee's findings reveal a profound trend to criminalize marine environmental incidents, which will have an impact on all of us who practice in this area.That concludes my report. Thank you.PRESIDENT McCORMACK: Thank you very much, Matt.I now call upon the Vice Chair of the Marine Finance Committee, Bruce King.MR. KING: There are two items of interest. One is in May a Joint Subcommittee of the Committee on Marine Finance and Committee on Fisheries was formed to review and comment on the Maritime Administration's proposed regulation that is coming out shortly on the American Fisheries Act, a law that substantially enhances the citizenship restriction on the ownership of fishing vessels and on the citizenship of lenders to the fishing industry. Those regulations are now about to be ready for publication in draft form by the Maritime Administration later this month. The Joint Subcommittee will be very busy trying to prepare comments and to get those approved by the organization this fall.If any of you have any interest in this matter, please see me afterwards or get in contact with Stephen Johnson, the Chairman of the Joint Subcommittee who is in your MLA directory in Seattle.The other item you may recall last May is the Joint Subcommittee on Vessel Foreclosures and Insolvency--which is a Joint Subcommittee between Marine Finance and Practice and Procedure Committees--sought and received Board approval of the proposed amendment to the Fair Debt Collections Practices Act. That amendment was designed to deal with the problem that this Act taken on its own can be interpreted to prevent the mortgagee of a yacht from foreclosing *in rem*if the yacht is not located in the state of residence of the owner or if it is not located in the state where the loan contract was signed. After a couple of years of effort we proposed an amendment to deal with this and it was approved by the Association.Now the auto industry finance groups and the aviation finance groups have taken an interest in this and would like to expand the statute to deal not with just vessels but all personal property. This is not something that this organization on its own cares about. But these groups have insisted that this change be made as a condition for their not opposing our proposal.The Committees and the Board of Directors of the Association therefore approved a change to last year's vote to change the word "vessel" to "personal property" and has authorized those of us on the Committee to negotiate with the groups to preserve the general spirit of our original proposal.That concludes my report.PRESIDENT McCORMACK: Thank you very much, Bruce. I now call upon the Chair of the Marine Insurance Committee, Jean Knudsen.MS. KNUDSEN: Thank you, President McCormack. Good morning, ladies and gentlemen.The Committee on Marine Insurance and General Average met on Tuesday. We had a very well-attended and lively discussion. We reviewed the current projects underway in our three Subcommittees on general average, cargo, hull and P&I. I wish to thank Simon Harter, Chair of our Hull and P&I Subcommittee, for his Subcommittee's work on the Annotations to the P&I clauses. We hope to the project ready for publication by the Spring.Also, I wish to thank Sandy Balick for the Cargo Subcommittee's on its various projects, which are continuing.Gene George, our Vice Chair, has prepared an excellent newsletter. There are copies of that at the back of the room which I would suggest that you may wish to take. Gene did an excellent job and also summarized a case called *ECDC Environmental*, which we discussed.During the course of our meeting we had two speeches. The first speech was given by Geoffrey Hudson on a new proposal to review general average which has been put forward by the IUMI to the CMI.Also, I'd like to thank Tim Taylor for his speech on the SCOPIC clause.During the course of the week our Committee had three working groups meet. The first one was the working group on Energy Insurance. I wish to thank Ed LeBreton, who is chairing this most interesting project.Our group on Wreck Removal Law review, chaired by Hal Watson, also met and has made significant progress, as well.The group on the Restatement of Marine Insurance met and will be writing to President McCormack with our mission statement.That concludes my report.PRESIDENT McCORMACK: Thank you very much, Jean.As Jean has indicated to you, and I think as our Secretary has reported, the ALI has indicated to us that they are not at this time prepared to go forward with what our proposal was with them, that is, a joint activity on the Restatement of the Law of Marine Insurance. The members of that working group have all given me responses to various questions I had put to them as to the future of this activity. They met and discussed it. We intend to discuss it further. I'm waiting, as Jean said, for a letter from them as to their recommendations. I will be in a position probably to advise the Board and the membership about the continuation or whatever action is taken with regards to this project in the next few months.That working group has done a very fine job in coming up with all the outlines they have done and are still working on.I now call upon the Maritime Criminal Law Committee, Larry Kahn of New York.MR. KAHN: Thank you, President McCormack, officers, members of the Board, proctors, associates and guests.The Maritime Criminal Law Committee met yesterday and devoted our entire meeting time to discussions of the strict criminal liability in environmental statutes. The discussion was extremely spirited. There was quite a lot of participation. At the conclusion we unanimously agreed to draft a proposed resolution to be considered and addressed by the Board at its next meeting reflecting the concerns of the MLA with regard to the issue of strict criminal liability and its potential for harm to the industry.That concludes my report.PRESIDENT McCORMACK: Thank you very much, Mr. Kahn. Tony Whitman will now report on behalf of the Navigation and Coast Guard Committee.MR. WHITMAN: Good morning, President McCormack, officers, members and guests of the Association. I speak to you this morning on behalf of Bob Parrish, who on Tuesday morning led our spirited and very well-attended meeting of the Navigation and Coast Guard Committee but who has fled the hurricane in favor of tobacco litigation.We discussed a number of items which I will mention only briefly. One, there is currently going on an interagency role and missions of the Coast Guard task force work. This is looking at the entire, as the name implies, roles and missions of the Coast Guard, which are being examined by this interagency task force. We don't have a schedule on the conclusion of that work.We understand that with regards to environmental crimes, the Coast Guard has new field instructions for investigation of environmental incidents and potential crimes that are expected to be published shortly.It is suggested or was suggested to the Committee with regard to the extension of the contiguous zone to 24 miles that this would affect primarily customs, criminal law and perhaps the Death on the High Seas Act, but that the FWPCA and CERCLA will not be affected by this extension of the contiguous zone. We were assured by Phil Berns that in the unlikely event that you can find a marshal, he will still only go as far as three miles out. The 24 miles is further than you can expect a marshal to travel.Finally, there is a fatigue study going on across the board on all transport modes. That fatigue study also includes a study of fatigue and how that may contribute to marine casualties and incidents. The Coast Guard disclaims any intent to publish regulations with regard to fatigue of mariners. But that's a long way down the road. Because it is interagency or at least intermodal driven by the DOT and not the Coast Guard itself, we may find regulations down the road.Mr. President, that concludes my report. Thank you.PRESIDENT McCORMACK: Thank you very much, Tony. I now call upon Bob Zapf, the Chairman of our Practice and Procedure Committee.MR. ZAPF: Good morning, ladies and gentlemen, officers and members of the Board.My report has been substantially shortened because of the able and probably much more succinct description of the proposed Convention on Recognition of Judgments and Jurisdiction given by our most able Secretary and also by Bruce King's description of our activities in connection with the Fair Debt Collections Practices Act.I will report on old business, that our Admiralty Rules, which we had negotiated with the Department of Justice and through the Advisory Committee to the Standing Committee on Civil Rules, have passed, all the way through the Judicial Conference and have now been presented to the Supreme Court for action, hopefully before May 1, in which case they would then, assuming Congress did nothing, go into effect in December of the year 2000.There are, however, still two changes that we are working on. This is an ongoing process and as we go through these things new problems arise and they have to be addressed. We still need to go through the whole process in connection with the amendment to Rule B, which we described at our May meeting, in which we wish to define within the Rule the time at which the determination is made as to whether the defendant is not found within the district. We propose to define that time as the time at which the complaint is filed. That is a relatively modest change. It conforms to existing law, but it was felt that it was best to put it in the Rule.The other change that needs to be addressed and is still a matter of some struggling concern to the Committee deals with the issue of notice of arrest proceedings, and who gets it and when they get it. Under the current rule, Rule C(4), notice must be given in the event that property is not released within ten days. The statute, 46 U.S.C. § 31325(d), defines three categories of persons who must receive this notice, but it also provides that the notice need not be given to any of those three categories if those individuals or persons cannot be found within the United States.This has raised some concerns in the Advisory Committee and in the Standing Committee on Civil Rules as to the constitutionality of these provisions. It raises the potential for a due process argument that, even if you have actual knowledge of the existence of a lien or a mortgage, if that is held by a foreign entity, they are not entitled to notice under the statute.We have evolved a two-step procedure in terms of addressing this. One will be to amend Rule C(4), which in the first instance, requires conformity with the statute so that you define which categories of people will receive notice. Secondly, we make a legislative initiative to amend the statute to address concerns about whether foreign entities of which we have actual knowledge or could obtain without undue effort knowledge, of other lienholders, whether those entities should also receive notice. That is an ongoing project. We hope to have something further to report at our May meeting.I am happy to report that the Arrest Convention has been concluded. It has been submitted to the United Nations. It is now open for signature. It will remain open for signature for two years. It will come into effect when ten contracting states have signed on. Whether this convention will have the wide acceptance of the 1952 convention is a very debatable point and only time will tell.Finally, as far as new projects are concerned, we have been asked to review rules on practice and procedure and evidence promulgated by the U.S. Coast Guard in connection with administrative procedure regarding suspension and revocation hearing. The Coast Guard has issued new rules. They're in effect right now under the guise of an interim rule. The Coast Guard has extended the comment period through April. The Coast Guard Committee and the Practice and Procedure Committee will be reviewing these new rules to see how they conform to the prior rules and also whether there are other changes that ought to be made, as we have now been given an opportunity to provide comment on them.We have also undertaken to look at the new "International Standby Practices, ISP 1998," which deals with letters of credit which would be used in lieu of a bond for release of vessels, to compare that to the former Uniform Commercial Practices 500, which is the standard for letters of credit in commercial transactions that has been applied to these types of standby letters of credit previously. The new standby procedures are designed specifically for security issues. We want to look at those, compare them to the UCP 500, and determine whether there is a reason to recommend those standards be integrated into a letter of credit that you might negotiate or accept as security for release of a vessel.That would conclude my report for this morning. Thank you very much.PRESIDENT McCORMACK: Thank you very much.I now call up Frank Wiswall to give you some information on the CMI.MR. WISWALL: Thank you, Mr. President.This hotel has provided each of you with a pad and pen. For those of you who are on line, please write down the Comité's new Web address. It is "www.comitemaritime.org" and the "comitemaritime" is all lower case, all one word, and no accent on the "e." Don't forget!If you admire this website, which I think is extraordinarily well done, I should give credit to our webmaster, Professor John Hare, of the University of Capetown, which is where the server is. It's a work in progress, as you will see, but everything works. It's just not totally complete yet.And now, Mr. President, I would take an additional ten seconds, I would like to remind you that the CMI American Foundation would welcome your contributions to its good works. These are fully tax deductible. The Foundation supports such things as the Elliott B. Nixon prize. We have recently received a number of memorial gifts in respect of members of the Association who passed on in recent years. If you would like to play it safe, we will take your check for your own memorial gift in advance.(Laughter)PRESIDENT McCORMACK. Thank you very much.Our next Committee report will be Don Greenman, Recreational Boating.MR. GREENMAN: Thank you, President McCormack, officers, members and guests.Our Committee met on Tuesday and we received a report from Allen Black who was appointed as Chair of the Ad Hoc Subcommittee to consider a proposal we had received earlier from the U.S. Sail Association with respect to the Racing Rules versus the Rules of the Road.If I might, I'll quote from the summary of his report: "The Committee proposes that the Association recommends an amendment to the Inland Navigation Rules to provide for the application of sail race rules to the conduct of vessels engaged in sail races on the inland waters of the United States. The Committee notes that the proposed amendment would serve to enhance the safety of sailing vessels maneuvering in close proximity during sailing races and would lessen uncertainty regarding the proper conduct of such vessels or operators, as well as tribunals."As you may remember from a prior comment I made at am earlier meeting, this is a result of a First Circuit decision in the *Endeavor* case, *Juno v. Endeavor*, 1995 AMC 2678. In that case the First Circuit held that by contract the parties to a sail race have adopted the Racing Rules and thus reversed the decision of the lower Court which applied the Rules of the Road. There appears to be a conflict among the courts as to whether you do apply Racing Rules or the Rules of the Road. This amendment would be in the interest of uniformity as well as safety.If anyone would like to have a copy of this report, please give me your card and let me know and I will make one available for you.We are not at this time asking the Association to take a position on this report, but I anticipate we will do so next spring. We probably also will ask the Coast Guard and Navigation Committee to have a look at it.Secondly, we received a report from Joe Tabrisky who has been monitoring the progress around the country of the question of licensing and certificating of boaters. We, some years ago, adopted a model boating license statute that we hoped states would adopt if they were to adopt any sort of requirement for licensing or certification.This year California passed a statute which was based very much on the MLA proposal, which is the good news. The bad news is that last Sunday the governor of California vetoed it. He didn't give reasons for vetoing it so we don't know whether it was anything to do with the way it was passed or whether he was just against the concept of licensing in general.Finally, at the back of the room you will find "Boating Briefs" which is our newsletter that is so ably put out by Frank DeGiulio.Thank you, Mr. President.PRESIDENT McCORMACK: Thank you very much, Don. I now call on the Chair of the Salvage Committee, Jim Shirley.MR. SHIRLEY: Thank you very much, President McCormack, officers, fellow members and guests.We met Tuesday afternoon and as has become our custom in the Salvage Committee, we had a very full agenda and lively discussions. I'd like to especially thank several of our guests from abroad who attended; Geoffrey Hudson and Paul Hinton from the UK, Adrian Dabinovic from Argentina, and Drew James from Australia. They were particularly helpful in our discussions regarding the SCOPIC clause, responder immunity under OPA 90 and foreign environmental statutes, and particular responder immunity for salvors. This led to further discussion of the criminalization of environmental pollution, and also to the UNESCO treaty, euphemistically entitled "Draft Convention for the Preservation of Underwater Cultural Heritage." Drew James was able to confirm that that draft treaty still is not well advertised among the Australian Maritime Bar.We'd also like to thank Lucienne Bulow, President of the Society of Maritime Arbitrators, for her participation and particularly with respect to discussion of the U.S. Open Form Salvage Contract, known as MARSALV, published by the Society of Maritime Arbitrators, and to Rich Buckingham, from the office of the U.S. Navy Supervisor of Salvage, who gave us an update of what is happening in salvage with the U.S. Navy.We also discussed the continuing work on updating the Blackwall rules, a request made of us by Past President Paulsen. There wasn't much added to prior work. This time I hope we've finally reached the point that we can do what Past President Paulsen asked us to do several years ago.We discussed the relatively recent salvage decisions.That concludes my report. Thank you very much.PRESIDENT McCORMACK: Thank you very much, Jim. I now call upon Pat Cooney, the Chair of the Uniformity Committee.MR. COONEY: Thank you, Mr. President, officers, members, guests.The Uniformity Committee met yesterday, Thursday, and needless to say, we discussed the *INTERTANKO* case, among other things. Also, the *Calhoun v. Yamaha* case is back up on our radar screen.I'll give you a brief update on the status of *INTERTANKO*. As you know, the MLA filed an *amicus* brief in support of the petition of *certiorari*, which has been granted. The case has been put on an expedited briefing scheduled and is to be argue in early December. Authorization has been given for an *amicus* brief from the Association on the merits. That brief will be filed this Friday.In its preparation we are attempting to articulate very broadly the principles of uniformity or to put it in terms that I think we have to use before this Court, broad field preemption. As you know, according to the Ninth Circuit, under the Savings Clause of OPA 90, states are allowed to regulate the operations of vessels, including the manning, training, watch-standing and this sort of thing, and thus to impose stricter standards than have been promulgated by the Federal Government, the United States Coast Guard.The danger is not simply isolated to the State of Washington because, under the Savings Clause, virtually any jurisdiction, any port can issue its own regulation, so the decision has far-reaching consequences. There will be a number of *amicus*briefs filed. As you know, the United States is a petitioner, as well as*INTERTANKO*, and is supporting the position of the Coast Guard whose ability to regulate is seriously questioned by this case.The second case that we discussed in our meeting, which I will call to your attention because I think we're going to be hearing more about it, is an old friend, the *Calhoun v. Yamaha* case, which is on a remand from the Supreme Court decision. I understand the District Court has held that state law will control liability as well as damages. Those issues have been certified to the Third Circuit. I'm advised that the case will be argued this coming month of November. We anticipate that case will be on its way up to the Supreme Court, regardless of how it's decided. We will be monitoring this case and report on its progress.Mr. President, that concludes my remarks.PRESIDENT McCORMACK: Thank you very much. On behalf of the Association I want to express our thanks to Pat and to his colleagues who are working on the draft of the *amicus* brief. We have a very short time frame. It has to be filed next Friday. One of our other members, Barbara Holland, is also filing an *amicus* brief on behalf of the American Waterways Operators. She was at the Committee meeting. We discussed that with her. We expect there will be many more *amicus*briefs filed this time than there were on the petition for *certiorari*.I want to express my thanks to Pat for all his hard work. Pat and I spent a lot of hours working on the *amicus* brief and I'm delighted that we have such excellent assistance on this.I now call upon the Chair of the Young Lawyers Committee, Doug Muller.MR. MULLER: Thank you, Mr. President.Since I last reported to you in the spring, Josh Force, who is our Committee secretary, and myself have been working on some nuts and bolts issues with our Committee. Our primary task initially was to update our Committee list which has not been updated, I think, since 1996. As you can imagine in these days of lawyer mobility, especially young lawyers, it was badly outdated. We have done that now and have over 200 people on that list. Some of those are not young lawyer members. We have the Committee Chairs, members of the Board and the officers on the list, as well, but it's a fairly large group.In aiding us in communicating with that group, and with Josh Force's help, we've been adding E-mail addresses which will hopefully expedite how we communicate amongst ourselves. That was something that was originally started by one of the past Chairs, Joe Tabrisky. We are trying to broaden it to include that entire mailing list.Once that mailing list was updated we circulated our Committee newsletter which is called "TQ" or "Theoretically Quarterly," which has lived up to its name. We usually get it out at least twice a year and it is not circulated to the general membership but it is circulated to all the members of our Committee, to the Committee Chairs, to the officers and to the members of the Board. It details what is happening amongst the young lawyers in our group.In terms of projects, it also helps us to advertise the various projects of the working Committees, the Standing Committees that we are involved in. In the interest of time I won't detail all of those projects here, but I will say that we usually have three or four projects of various Committees in which we have enlisted the help of young lawyers.In addition, this year Denise Blocker, who headed the CLE program, was kind enough to give us an hour of time during the CLE presentation to give an update on recent developments from various areas. Phil Buhler of Jacksonville, Larry Kahn of New York, Josh Force of Los Angeles and Sandy Kelly of Cleveland were our speakers. I personally thought they did a great job yesterday. The papers were valuable. Hopefully, after this meeting we'll be able to circulate their papers and the papers on professionalism to the various members of our Committees so that they may have them.Our Committee met this morning at eight. We had reasonably good attendance. President McCormack was kind enough to attend. We had one foreign guest, Enrique Garza from Mexico City, who sat in with us. At our Committee meeting we talked about the various ongoing projects and staffing.I will repeat something that I said at the spring meeting and that is, if you have young lawyers in your firms who are either just getting involved in the MLA or would like to become involved, please consider referring them to our Committee. It's an excellent entre to the work of the Association. It also allows us, frankly, to staff the various projects that we've had. Even though we have a very large Committee, we seem to have a core group that work on all the same projects. The more interested people that we have the better we will be able to staff the various projects that need staffing.For the Committee Chairs, if you have projects that need attention, please come see me. Whether they're new projects or if they're projects that for some reason have languished, please see me and I will correct the situation. I hate to put that burden on you but usually you are in the best position to know if you're not getting the proper attention. If you'll come see me we'll see that it gets corrected.Thank you, Mr. President. That concludes my report.PRESIDENT McCORMACK: Thank you very much.Again, this is another one of our Committees with an outstanding leadership in Doug Muller. I'd like commend Doug and the Young Lawyers Committee for the outstanding work they did on the CLE. I know what it takes to write papers. One part of the job of President is to write a lot of papers. I can assure you that their work was fine. I think all of us, the officers, the Board and the members, owe the Young Lawyers Committee a note of thanks for the fine work they've done in making this meeting and the CLE part of this meeting an outstanding one.I have asked Denise to make sure that Doug gets enough copies of the CLE program so that every member of the Young Lawyers Committee can have this very valuable work on professionalism, as well as the papers of the members of their Committee. I can assure you that the young lawyers in my firm will be given copies of those documents. I know that Doug has been talking with Winston about the issue of putting some of those documents on the website and I look forward to seeing them there.At this time I would call upon our golf Chairman, Harold Watson, to give us a report on the golf activity. I also ask Richard Sayer, senior partner of Ince & Co., to come up and he will award the Donald O'May prize.MR. SAYER: Mr. President, I'm very grateful to you for giving me this opportunity, as one of the Donald successors, to present the Cup which he donated to the MLA golf tournament just before he died in 1989.Now, Donald was not a great golfer and in that respect I've carried over tradition.(Laughter)MR. SAYER: He was, however, a tremendous supporter of the MLA and, again, I hope I've kept that traditional up. I'm a firm believer in your Association. I'm a firm believer in the transatlantic amity which is promoted particularly at these resort meetings. I know I speak for all of your foreign guests when I say we thoroughly enjoyed ourselves this week and we're most grateful to you for your hospitality as an Association.Now, it's a particular pleasure to be able to give the trophy to Harold Watson. He organized a splendid event and this is the least we can do for him.(Laughter and applause)PRESIDENT McCORMACK: Harold Watson can now report on the other activities now that he's gotten this cup.MR. WATSON: I'd also like to thank Richard for his comments and to say that I think it's a very big honor when you have such a distinguished name on this trophy. But I think the most enduring aspect of this meeting, for most of us in many ways, is the friendships we form, particularly with our foreign guests. We all love to see them.The low net of the tournament was won by Peter McLauchlan who was the only player to play to his handicap on this very difficult course. Jane Young won both the women's low gross and the women's low net.This year we also tried a little different format and gave our players the option of playing either in the individual competition or playing scramble. The scramble winners was a team composed of Mike Stein, Frank Neuner, Mark Langis and Drew James. I think we had a very splendid outing and better weather obviously than we have today.That concludes my report. Thank you.PRESIDENT McCORMACK: Thank you very much.(Applause)PRESIDENT McCORMACK: Lest some of you think there was something amiss, Hal Watson was the Chairman of the golf and won the golf and Paul Calvesbert, the Chairman of the sailing, won the sailing. I don't know how we managed to arrange that, but I do commend both of these gentlemen for winning their activities.I now call upon Tony Whitman to tell us a little bit about what's going to happen two years hence. Tony is the Chair of the Arrangements Committee for that event.MR. WHITMAN: Thank you again, Mr. President. Although Orlando will be hard to top, we are very excited already about the program for 2001. The next resort meeting will be held the week of October 15 of the year 2001 at the Hotel Del Coronado on Coronado Island across San Diego Bay from the city of San Diego. For those of you who may not have been there, this hotel fronts on a beach on the Pacific Ocean, backs on to San Diego Bay with golfing and tennis and boating right there on San Diego Bay. It is a glorious facility that truly combines Victorian era charm, as it was built in the 1800's, with totally modern amenities.Your excellent Committee is already hard at work with the assistance of Resort Meetings Consortium to try to ensure that we have as good a meeting in 2001 as we have had here. So I hope you will all go home and put on your calendars the week of October 15, 2001, for the Hotel Del Coronado in San Diego.Thank you very much.PRESIDENT McCORMACK: Thank you very much, Tony. |