THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

ROBERT G. CLYNE
PRESIDENT
16855 NORTHCHASE DRIVE
HOUSTON, TX 77060
281-877-5989 FAX: 281-877-5803
RCLYNE@EAGLE.ORG

HAROLD K. WATSON
FIRST VICE PRESIDENT
801 TRAVIS STREET, SUITE 1910
HOUSTON, TX 77002
713-343-2952 FAX: 713-546-9806
WATSON@CHAFFE.COM

FRANCIS X. NOLAN, III
SECOND VICE PRESIDENT
1633 BROADWAY, FLOOR 47
NEW YORK, NY 10019
212-407-6950 FAX: 212-407-7799
FNOLAN@VEDDERPRICE.COM

DAVID J. FARRELL, JR.
SECRETARY
2355 MAIN STREET, P.O. BOX 186
S. CHATHAM, MA 02659
508-432-2121 FAX: 978-666-0383
SEALAW@LIVE.COM

WILLIAM R. CONNOR, III
TREASURER
88 PINE STREET, FLOOR 21
NEW YORK, NY 10005-1801
212-376-6417 FAX: 212-376-6490
WRCONNOR@MDWCG.COM

BARBARA L. HOLLAND
MEMBERSHIP SECRETARY
1191 SECOND AVE, SUITE 1800
SEATTLE, WA 98101-2939
206-816-1307 FAX: 206-464-0125
BHOLLAND@GSBLAW.COM

May 5, 2015

via email: swh@cbp.com.au

Stuart Hetherington
Colin Biggers & Paisley
Level 42, 2 Park Street
Sydney NSW 2000, Australia

Re: Questionnaire – CMI Arbitration

Dear Stuart,

In response to your letter dated February 20, 2015, I enclose responses of the Maritime Law Association of the United States.

Given the short period of time until the Istanbul meeting, I am copying both Anne Verlinde and Luc Grellet.

Thank you,

Robert G. Clyne
President,
The Maritime Law Association of the United States

cc: Anne Verlinde: admin-antwerp@comitemaritime.org
Luc Grellet: lgrellet@reedsmith.com

Arbitration and ADR – CMI Arbitration Questionnaire

Responses of the Maritime Law Association of the United States

1. Would you encourage the CMI to play a role in Maritime arbitration:

   Majority View: They see no role for the CMI in maritime arbitration. The LMAA and SMA are the primary choices for sophisticated industry entities and their roster, rules, and procedures are accepted by the maritime legal community. Any changes to the LMAA and SMA can be and are addressed in informal discussions with arbitrators and in some instances formally when events occur which bring together the arbitrators and maritime bar. At this time when Singapore, Houston and other pockets of maritime arbitral centers are seeking to increase market share, the last thing the industry needs is another competing model.

   Minority View: Yes, they would encourage the CMI to play a role in Maritime arbitration. CMI's role need not be competitive as against other institutions. To the contrary, it can offer support to those institutions. For example, CMI's purview which consists of over 40 National Maritime Law Associations, allows it to marshal scholarship and legal analysis of sometimes conflicting, other times contradictory laws. That is a valuable resource for dispute resolution specialists concerned with procedure, evidence, and enforcement of maritime arbitration awards around the world. The ICC, ICDR, and other ADR regimes contemplate those concerns, yes, but to imagine that the aggregate membership of the CMI cannot assist or inform those concerns with specific regard to maritime ADR sells short the CMI and its members. For that reason and others, yes, they believe the CMI should play a supportive role in maritime arbitration.

2. If the answer to point 1 is affirmative, to which extend would you consider the CMI should engage itself in this field?

   Majority View: N/A

   Minority View: To the extent that current regimes can be explained, especially to those potential arbitral participants unable to afford adequate representation and explanation. Without the ability to present ADR rules and regimes the CMI may seem deficient in an area it should be recognized as preeminent. To that end, the CMI's engagement should focus on accessibility, instruction, and innovation. Specifically, the CMI's presentation of ADR regimes should be online and accessible in various languages. As for innovation, the CMI could offer an "electronic-setting" to which parties' selected rules are applied during binding video conference arbitration.

3. Would you support the three above areas of investigation or only some of them?

   Majority View: No. But if the CMI moves forward, of the three areas the first has some potential. For the first area, the website is a good public benefit. Making the information public will save some time and monies for companies as counsel will take less time to find information to answer client queries. But are there maritime-specific recognition and enforcement issues

law-wise? Not that they know of. And the recognition and enforcement issues are addresses in various treatises. For the second issue it is admirable but who is going to decide which court systems are not "technically satisfactory". Is it for maritime practitioners who comprise the CMI to make this assessment? Unlikely. For the third, they don't see any purpose. They have not found the arbitration bodies or rules are so poorly suited for maritime particularities to complain about.

Minority View: They would not support 2/(i) or 3/ (assistance and creation of model rules). 2/(i) and 3/ seem to align the CMI against other institutions, with 3/going so far as to propose a CMI-regime that adequately address the specificities of maritime arbitration. Though novel (and an exercise they would enjoy), drafting those rules to the satisfaction of all would be difficult and probably very expensive. They would split the CMI's efforts 60% to 40% between number 1/ and 2/(ii), favoring 2/(ii). In this way, the CMI can provide clarification regarding existing regimes and move towards expertise in online dispute resolution. They believe that expertise will prove invaluable going forward, given that the law will continue chasing the technology. Were it that CMI did provide an electronic-setting for arbitral hearings specific to maritime issues, then after a time, it may be better situated to draft its own set of rules.

4. Formulate any other suggestions for examination by the working group.

Majority View: None

Minority View: Just the one mentioned regarding an online-setting. CMI seems particularly well-situated to offer this. As an ancillary benefit, members and students could learn from the electronic settings (assuming sensitive information were dubbed over or redacted).