

[10509]

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

Held at

**The Association of the Bar
of the
City of New York
New York, New York**

on

Thursday, May 5, 1994

The meeting was called to order by President George W. Healy, III at 9:00 a.m. In addition to President Healy, the following officers were present:

Chester D. Hooper
James F. Moseley
Howard M. McCormack
Marshall P. Keating
Theodore S. Cunningham

and the following Board members were present:

George D. Benjamin
Philip A. Berns
Richard C. Binzley
Lizabeth L. Burrell
George F. Chandler, III
Joseph D. Cheavens
John A. Edginton
J. Dwight LeBlanc, Jr.
David A. Nourse
Brendan P. O'Sullivan
Winston E. Rice
Thomas S. Rue
Kenneth H. Volk

present by invitation were:

Christina Krescanko, Dr. Frank L. Wiswall, Jr. who were present at the continuation of the meeting at the Princeton Club.

President Healy welcomed the members of the Board of Directors and guests.

I. SECRETARY'S REPORT

Secretary McCormack reported that the Minutes of the Board of Directors Meeting held in Charlottesville, Virginia on Friday, March 25, 1994 had been mailed to all members. Secretary McCormack reported that George F. Chandler, III of New York, Chairman of the Carriage of Goods Committee, indicated that the report of the activities of his Committee as indicated in the Minutes of the Charlottesville Board of Directors meeting were not precisely correct, more specifically the following language in the Charlottesville Board minutes, at page 7:

“Board member Chandler also reported on the meeting of the Claim Service Committee of the AIMU held February 24, 1994, at which there was substantial discussion considering both Hague/Visby and the Hamburg Rules. At that meeting there was unanimous support for the issue of uniformity and the Hague/Visby regime in contrast to the Hamburg Rules. Board Member Chandler reported that his Committee was attending these discussions with the intention of attempting to keep the provisions of Hague/Visby intact but updating various issues.”

At the request of Mr. Chandler, the modification to those minutes should be as follows:

“Board member Chandler also reported that he had received word that the Claim Service Committee of the AIMU, at a meeting on February 24, 1994, had taken the position that they opposed any effort to revise COGSA that went beyond Hague/Visby, irrespective of the final form of the proposed revisions. Board member Chandler reported that his Committee was attempting to maintain consistency with Hague/Visby and with the ABA Resolution of August 1988 which this Association supported.”

Secretary McCormack indicated that he would advise the general membership on Friday, May 6, 1994 of the modification to the Minutes of the Charlottesville Board meeting requested by Mr. Chandler.

Secretary McCormack also reported that the MLA Report, under the Editorship of Gordon W. Paulsen of New York and Assistant Editorship of Leroy Lambert of New York and Matthew A. Marion of New York, would be available for the membership at the general meeting on Friday, May 6, 1994.

Upon motion duly made and seconded, the Board of Directors Minutes of the Charlottesville meeting, as amended by Secretary McCormack, were approved and accepted.

II. TREASURER'S REPORT

Treasurer Keating reported the cash on hand and investments for the period through March 31, 1994, which reflected the Association's sound financial position. A copy of the Association's financial report is annexed to the original copy of these Minutes. He also reported that he had concluded arrangements for the Fall Dinner/Dance to be held on November 4, 1994 with the New York Hilton, which was to be the forum for the first time of the Association's Spring meeting on May 6, 1994.

Treasurer Keating also expressed the best wishes of the existing Board members and all of the officers to the retiring Membership Secretary, Theodore S. Cunningham, for his outstanding work in performance of his duties over the last four years. On behalf of the officers and the Board, Treasurer Keating also expressed the best wishes and appreciation to retiring President Healy for his outstanding performance as President of the Association from 1992 through 1994 and expressed the best wishes of the Association, who looked forward to the able cooperation and assistance of Mr. Healy in his status as Immediate Past President.

Upon motion duly made and seconded, the Treasurer's Report and expressions of appreciation to President Healy and retiring Membership Secretary Cunningham were approved and accepted.

III. MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Cunningham reported that the Association's total membership was 3,588 members as of May 1, 1994. He presented the names of 51 applicants qualifying for Associate membership. Upon motion duly made and seconded, the 51 Associate applications were unanimously elected. In addition, Membership Secretary Cunningham also presented the names of 39 applicants qualifying for advancement to Proctor status. Upon motion duly made and seconded, the 39 Proctor applications were unanimously elected. He also presented

the names of 5 applicants qualifying for Non-Lawyer membership. Upon motion duly made and seconded, the 5 Non-Lawyer members were unanimously elected. A list of the successful candidates for Associate, Proctor and Non-Lawyer membership is annexed to the original of these Minutes.

He also reported with regret the death of the following members since the October meeting:

George Dulebohn of Pompton Plains
Hon. Warren L. Jones of Jacksonville
Hon. Norman P. Ramsey of Baltimore
Edward D. Ransom of San Francisco
Hon. Michelle Pitard Wynne of New Orleans
George S. Zacharkow of Bridgeton

The Membership Secretary also reported on the status of the 1994 Directory, which was on schedule. He also reported on the previous mailing to the members of the Association of the Schedules of the meeting time and locations of the various committees of the Association to be held during the Spring meeting in New York.

Upon motion duly made and seconded, the Membership Secretary's report was approved and accepted and is appended to the original copy of these Minutes.

President Healy reported on the following topics:

A. Ad Hoc Committee on York/Antwerp Rules

President Healy reported on the March 21 letter and enclosure from Lawrence J. Bowles of New York, Chairman of the Ad Hoc Committee on York/Antwerp Rules. These Rules will be the subject of discussion at the forthcoming Comité Maritime International Committee meeting to be held in Sydney, Australia in October 1994. The Ad Hoc Committee was seeking the approval of the Board for the Association's delegation to participate in the revisions of the York/Antwerp Rules as well as discussions on the other subjects scheduled for the Sydney meeting.

Upon motion duly made and seconded, the Board of Directors unanimously approved the proposed resolution of the Ad Hoc Committee authorizing its delegates to exercise their best discretion in casting the Association's vote or votes at the CMI meeting in October 1994.

B. Conference Advisory Committee for the Second International Conference on Maritime Law and the Electronic Chart

President Healy reported on the request of Admiral Yeager, Director of the Coast and Geodetic Survey, National Oceanic and Atmospheric Administration for nomination by the Association for their delegate to the Conference Advisory Committee relative to the Second International Conference on Maritime Law and the Electronic Chart to be held in New Orleans on March 12-14, 1995. President Healy recommended, and the Board unanimously approved President's Healy's recommendation for Patrick J. Bonner of New York, Chairman of the Navigation and Coast Guard Committee, to serve as the Association's Committee Delegate to the forthcoming Conference, which would be held immediately before the Joint Admiralty Institute meeting in New Orleans on March 15-17, 1995.

C. Elliott B. Nixon Prize Competition

President Healy was delighted to announce that Peter W. Tomlinson of Atlanta, Georgia had won the Elliott B. Nixon prize competition with his paper on the issue of abandoned wrecks. President Healy indicated that Mr. Tomlinson would be awarded the prize and a suitable scroll at the general membership meeting of the Association on May 6, 1994.

D. Farewell to Retiring Board Members

President Healy, on behalf of the Officers and remaining Board members, expressed his deep appreciation and gratitude to the retiring Officers, including Kenneth H. Volk of Portsmouth, Immediate Past President and Theodore S. Cunningham of New York, Membership Secretary, and to the retiring members of the Board whose term had expired, including George D. Benjamin of New York; Philip A. Berns of San Francisco; J. Dwight LeBlanc, Jr. of New Orleans; and Winston E. Rice of New Orleans.

IV. PROPOSED RESOLUTION BY DAVID A. NOURSE OF NEW YORK, CHAIRMAN OF THE CARRIER SECURITY COMMITTEE REGARDING THE ISSUE OF STOWAWAYS

David A. Nourse of New York, Chairman of the Carrier Security Committee, reported to the Board about the activities of his Committee with specific reference to stowaways. Mr. Nourse submitted to the Board a proposed resolution concerning the consensus of the Association, to be submitted to Congress, concerning the troubling issue of stowaways. The Board approved the resolution.

V. AMENDMENT TO THE BY-LAWS

Immediate Past President Volk reported on the Ad Hoc Committee appointed by President Healy to consider the amendment to the By-Laws reflecting the terms of the various officers and the designation of the First Vice President. There was substantial discussion by the Board members concerning the proposed amendments and the previous correspondence exchanged with the Board by Immediate Past President Volk relative to the proposed modifications. There was substantial discussion among all Board members concerning the proposed amendments and the possible modifications of the By-Laws. After further discussion and consideration, the Board voted to postpone the vote on the proposed amendments and to have further consideration by the Ad Hoc Committee and the Board at a future Board meeting.

VI. CERTIFICATION OF SPECIALISTS BY THE STATE OF FLORIDA IN VARIOUS FIELDS OF LAW, INCLUDING ADMIRALTY

Second Vice President Moseley reported on the activities of the State of Florida relative to their action concerning certification of specialists in various fields of law, including admiralty. The Board had previously gone on record at past meetings of the position of the Association that certification of specialists in the field of admiralty law was reflected in their approval of advancement by Associate members to Proctor status or the grant of Proctor status to certain individuals who had established the necessary credentials to conform to the Association's requirements.

The matter of specialization had been considered previously by the American Bar Association and was the subject of a previous study by an Ad Hoc Committee of the Association. President Healy, therefore, appointed an additional Ad Hoc Committee on State Certification Programs to be chaired by Graydon S. Staring of San Francisco. The Committee would include the following members: Denise S. Blocker of San Francisco; Professor Robert Force of New Orleans; Warren J. Marwedel of Chicago; James F. Moseley of Jacksonville; Brendan P. O'Sullivan of Tampa; David J. Sharpe of Washington, D.C.; John W. Sims of New Orleans; Professor Michael F. Sturley of Austin; and Kenneth H. Volk of Portsmouth. The Committee would be known as the Ad Hoc Committee on State Certification Programs. It was expected that the Committee would be in a position to report to the Board at the November meeting of the Association.

VII. AMICUS BRIEFS

Lizabeth L. Burrell of New York, Chairperson of the Committee on Uniformity of U.S. Maritime Law, reported on the recent Supreme Court decision in

the case of *Miller v. American Dredging*, 62 USLW 4130, 127 L.Ed. 2d 285, 1994 U.S. LEXIS 1870 (1994), in which the Association had filed an *amicus* brief. A more detailed report on that decision may be found in the Minutes of the Board meeting held in Charlottesville on March 25, 1994.

Ms. Burrell also reported on the recent Supreme Court decision in *McDermott v. AmClyde*, 1994 USLW 4241, 1994 U.S. LEXIS 3122, 1994 AMC 1521 (1994) as well as *Boca Grande Club, Inc. v. Florida Power & Light*, 1994 USLW 4247, 1994 LEXIS 3123 (1994) in which the Association had filed *amicus* briefs. The Supreme Court had now issued its decision which supported the Association's position of the proportionate fault rule in personal injury and death claims. The Court's decision in *Boca Grande* also barred contribution claims. Ms. Burrell was pleased to note that the two decisions of the Supreme Court decided the two main questions which were the subject of the Association's *amicus* briefs.

Ms. Burrell also reported that the Association expected to file its *amicus* brief in the Supreme Court in *Great Lakes Dredge & Dock Co. v. City of Chicago*, 3F.3d 225, 1993 AMC 2409, *amended and rehearing en banc denied*, 1993 AMC 2984 (7th Cir. 1993), *cert. granted*, 62 USLW 3533 (1994) on the issues of admiralty jurisdiction and privity in limitation matters, which had arisen from the Seventh Circuit Court of Appeals decision, which had reversed the decision of the District Court of the Northern District of Illinois.

John A. Edginton of San Francisco also reported on the preparation of the *amicus* brief by the Association to the United States Court of Appeals for the Eleventh Circuit in the case of *Dietrich v. Key Bank, N.A.*, 693 F. Supp. 1112 (S.D. Fla. 1988). The briefing schedule had not yet been set by the Eleventh Circuit, but the Association's brief would be ready to be filed at the appropriate time. Mr. Edginton also reported on the application of a national banking association in which that Association had filed an *amicus* brief.

David McI. Williams of Baltimore, Chairman of the Marine Finance Committee, would prepare the Association's *amicus* brief and coordinate the schedule with counsel for all sides and other *amicus* participants.

Ms. Burrell also reported on the activities of her Committee concerning the recent *Zych v. SEABIRD, et al.*, 19 F.3d 1136 (7th Cir. 1994) decision, which affirmed the District Court's opinion at 811 F. Supp. 1300 (N.D. Ill. 1992) concerning the Abandoned Ship Wreck Act. As of the moment there was no application for an *amicus* brief, but the Uniformity Committee was looking at the matter further.

VIII. POSSIBLE REVISION TO THE UNITED STATES CARRIAGE OF GOODS BY SEA ACT

George F. Chandler, III of New York, Chairman of the Carriage of Goods Committee, reported on the continuing activities of his Committee concerning possible revisions to the U.S. Carriage of Goods by Sea Act. The Minutes of the previous Board meeting held in Charlottesville on March 25, 1994 with regard to Mr. Chandler's report had been modified in accordance with discussions held between Mr. Chandler and Secretary McCormack, which has been reported *infra*. Mr. Chandler alluded to that modification in reporting on his Committee's activities. As of the moment, his Committee does not yet have a final draft to be submitted to the Association concerning the amendments to the Carriage of Goods by Sea Act. There would be further discussions with his Committee as well as with the Committee on Stevedoring and Terminal Operations. There would also be discussions with the various subcommittees of the Carriage of Goods Committee. Mr. Chandler reported that the target for a full report to the Carriage of Goods Committee and, therefore, a full report to the Association was expected to be the Fall meeting of the Association.

Mr. Chandler reported that the draft would reflect a compromise among the various interests. He reported that it was his understanding that the American underwriters wanted to retain the provisions of the Hague/Visby Rules, which position the Association's Committee believed was not overly realistic, even though they would prefer to have those Rules continue in effect. Mr. Chandler indicated that the work would have to be one of compromise and that the final document may not be ideal for all parties, but it was an attempt to produce a document that would be able to achieve unanimity of agreement by the various interests involved.

IX. CMI MEETING—SYDNEY, AUSTRALIA—OCTOBER 1994

First Vice President Hooper was the Association's officer in charge of the U.S. delegation to Sydney. He reported on the forthcoming meeting of the CMI to be held in Sydney, Australia from October 2-8, 1994. Various brochures concerning the meeting would be available for members of the CMI Committee. As of the date of the Board meeting, 25 members of the Association indicated their intent to attend the meeting and expressed interest in one of the three main topics. Mr. Hooper indicated that there would be 10 official delegates of the Association, including members of the Working Group who would include Winston E. Rice of New Orleans, Chairman of the International Law of the Sea Committee, as delegate to the working group on Offshore Mobile Craft; Thomas J. Wagner of New Orleans, Chairman of the Marine Ecology Committee, would

be the Association's delegate on the issue of oil pollution; Lawrence J. Bowles of New York and Howard W. Meyerson of New York would be the Association's delegates on the modification of the York/Antwerp Rules. In addition, the CMI would also have seminars considering issues relating to classification societies as well as on marine insurance. Any further information that members of the Association may want concerning the CMI meeting should be addressed to Vice President Hooper.

X. PROPOSED RESOLUTION ON PUNITIVE DAMAGES BY THE MARITIME LEGISLATION COMMITTEE

The Board considered the proposal of the Maritime Legislation Committee regarding legislation on punitive damages. That proposal had been submitted to all members of the Association for consideration at the forthcoming general meeting to be held on May 6, 1994. There was substantial discussion among the Board members concerning the proposed resolution, which the Board was advised would be brought to the floor of the Association's general meeting by Francis X. Byrn of New York, Chairman of the Maritime Legislation Committee. After considerable discussion and consideration of the proposed resolution, it was moved, seconded and unanimously adopted by the Board that the proposed resolution of the Maritime Legislation Committee be tabled at the May meeting until there had been further coordination with various entities within the personal injury field as well as with other interested committees of the Association. The Board had been advised that the Chairman of the Maritime Legislation Committee would intend to bring this matter forward for discussion before the entire membership at the general meeting on May 6, 1994.

XI. POSITION PAPERS AND LEGISLATIVE INITIATIVES

Vice President Hooper reported on his activities with the various committees of the Association concerning position papers and proposed legislative initiatives that any of the committees of the Association were contemplating with regard to introduction to Congress of any proposed legislation. Mr. Hooper reported on the various activities and position papers received from the Maritime Legislation Committee, the Marine Insurance, General Average and Salvage Committee, the Practice and Procedure Committee, the Recreational Boating Committee, the Stevedoring and Terminal Operations Committee and the Ad Hoc Committee of the International Law of the Sea on Piracy. Mr. Hooper indicated he would be reporting further on those activities at the next Board meeting.

XII. NEXT BOARD OF DIRECTORS MEETING

The Board unanimously agreed upon the date of August 6 in New York for the time and location of the next Board of Directors meeting.

XIII. OTHER BUSINESS

The meeting of the Board of Directors continued at lunch at the Princeton Club. Dr. Frank L. Wiswall, Jr. of Castine, Chairman of the CMI Committee, then advised the Board members of the particulars concerning the forthcoming CMI meeting in Sydney. Chairman Wiswall indicated that the 1993 CMI Yearbook would contain documents relative to the various topics to be discussed at the CMI meeting as well as the documents relating to the Genoa Colloquium concerning oil pollution. The main topics to be considered at the CMI meeting were Oil Pollution and Economic Loss, the Revision of the York/Antwerp Rules and the revision and modification of the previous Draft Convention of 1977 on Offshore Mobile Craft. In addition, there would be a seminar on the issue of marine insurance at which Graydon S. Staring of San Francisco, former President of the Association, would be one of the leading speakers.

XIV. DINNER ARRANGEMENTS

Christina Krescanko of New York, Chairperson of the Dinner Arrangements Committee, reported on the activities of her Committee for the forthcoming dinner to be held, for the first time, at the New York Hilton Hotel on Friday, May 6, 1994. As of the date of the Board meeting, there were in excess of 1,410 members and guests of the Association who expressed their intention to attend the dinner. President Healy, on behalf of the Officers and Board of Directors, expressed the appreciation of the Association to Ms. Krescanko and her hard working Committee for their excellent work and long hours spent to insure a pleasant evening for the members and guests of the Association.

There being no further business, the Board of Directors meeting was adjourned at 2:00 p.m.

Respectfully submitted,
Howard M. McCormack
Secretary