

**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

on

Thursday, November 3, 1994

The meeting was called to order by President Chester D. Hooper at 9:05 a.m. In addition to President Hooper, the following officers were present:

James F. Moseley
Howard M. McCormack
William R. Dorsey, III
Marshall P. Keating
Lizabeth L. Burrell
George W. Healy, III

The following Board members were present:

Richard C. Binzley
David A. Nourse
Joseph D. Cheavens
Denise S. Blocker
George F. Chandler, III
John A. Edginton
Brendan P. O'Sullivan
Thomas S. Rue
Neal D. Hobson

George D. Gabel, Jr.
James B. Kemp, Jr.
George William Birkhead

Joining the meeting in progress by invitation were:

Dr. Frank F. Wiswall of Castine
Warren I. Marwedel of Chicago
Christina K. Whitaker of New York
Thomas J. Wagner of New Orleans

SECRETARY'S REPORT

Secretary William R. Dorsey, III of Baltimore reported that the minutes of the Board of Directors Meeting held in Tarrytown, New York on August 6, 1994 had been circulated to all the members of the Board and the membership in general. Upon motion duly made and seconded the minutes of the Board of Directors Meeting of August 6, 1994 were approved and accepted.

Secretary Dorsey reported that he had, after consultation with all Committee Chairs, formulated an up-to-date list of Committee members and had sent copies of same to all Officers. Any member of the Board who wanted all, or a portion, of the listing of all the Committee members, was asked to contact Secretary Dorsey.

On motion duly made and seconded the Secretary's report was approved and accepted.

TREASURER'S REPORT

Treasurer Marshall Keating of New York reported the cash on hand and investments as of September 30, 1994, which reflected the Association's sound financial position. He also distributed the Treasurer's Report for the three months ended July 31, 1994 and Deloitte & Touche's Auditor's Report and Statements of Cash Receipts and Disbursements for the years ended April 30, 1994 and April 30, 1993. Copies of these reports are annexed to the original of these minutes.

Treasurer Keating then advised that Barrister was no longer willing to be our computer data supplier but had been helpful in searching for a replacement. As a result of this assistance and investigation by Treasurer Keating and Membership Secretary Lizabeth L. Burrell of New York, we have received a proposal from Messrs. Brock Schechter & Polakoff, Certified Public Accountants in Buffalo, to

perform these services using state-of-the-art data processing. A copy of this proposal was distributed to the Board and is annexed to the original of these minutes. The charges for the various services to be provided were in line with those previously charged by Barrister. It was Treasurer Keating's and Membership Secretary Burrell's recommendation that we proceed to engage the services of Messrs. Brock Schechter & Polakaff in accordance with the terms of their proposal, provided that their due diligence checks did not produce unfavorable comments. Upon motion duly made and seconded, the Board approved the acceptance of the proposal of Messrs. Brock Schechter & Polakaff, subject to the due diligence inquiry by Treasurer Keating and Membership Secretary Burrell.

Treasurer Keating then indicated that the auditors feel that we should have a dissolution provision in our By-Laws providing for the disposal of the Association's assets in the event the Association does dissolve. He had prepared a draft of such a Resolution and circulated it to the members of the Board. This proposal will come up for a vote by the Board at the Board's March meeting.

Treasurer Keating then initiated a discussion on whether or not the Association should raise its dues now. The consensus of the meeting was that dues should not be raised at this time.

Treasurer Keating then reported that a bank account would have to be opened for the 1995 Arrangements Committee in order to finance their activities and provide a separate depository for funds received in connection with the 1995 meeting in Hawaii. On motion duly made and seconded the Board unanimously adopted the Bank Authorization Resolution; a copy of which is annexed to the original of these minutes.

Upon motion duly made and seconded, the Treasurer's report was approved and accepted.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Burrell reported that the Association's total membership was 3,573 as of November 3, 1994. She presented the names of 46 applicants for associate membership and 2 applicants for judicial membership. On motion duly made and seconded the 46 associate applications and 2 judicial applications were unanimously elected.

Membership Secretary Burrell also reported that the Proctor Admissions Committee had recommended that 10 associate members be advanced to proctor status. In addition because academic member George A. Zaphiriou has with-

drawn from George Mason University's School of Law and reentered private practice, the Proctor Admissions Committee recommended that he be returned to proctor status. Upon motion duly made and seconded the recommendations of the Proctor Admissions Committee were approved, and Mr. Zaphiriou and the 10 associate members were granted proctor status.

In addition, Membership Secretary Burrell indicated that 6 non-lawyer applicants had been recommended for non-lawyer membership. Those recommended are Noreen Arralde, Robert A. Biasotti, Hank vonHemmen, Hildegard Krause, Gerhard Kurz, and Peter Shaerf. Upon motion duly made and seconded the 6 non-lawyer applicants were unanimously elected to non-lawyer membership. The list of the successful candidates for membership and for admission to proctor status, and Ms. Burrell's written report, are annexed to the original of these minutes.

Membership Secretary Burrell also reported, with regret, the death of the following members: Raymond J. Burke, Sr. of New York, Edward L. Johnson of New York, Eugene ("Pete") R. Lippman of Philadelphia, O. Taft Nelson of Southberry, Richard A. Peters of Staten Island, Joseph J. Reddington of Middle Village, and Leon T. Seawell, Jr. of Norfolk.

Membership Secretary Burrell then indicated that the Directory's geographical listing of law firms will only list those cities in which an MLA member of the firm maintains an office. There then followed a general discussion of the need for a geographical listing in the Directory with some Board members indicating that they felt it wasn't necessary at all while others felt that it was quite a benefit to have such a listing.

On motion duly made and seconded the Membership Secretary's Report was approved and accepted and is appended to the original copy of these minutes.

MARCH 1995 OFFICERS AND BOARD OF DIRECTORS MEETING

The Board unanimously agreed upon the date of March 13, 1995 for the next Officers meeting and Tuesday, March 14, 1995 for the next meeting of the Board of Directors, both of them to take place in New Orleans immediately preceding the Tulane Seminar.

CERTIFICATE OF APPRECIATION TO PAST CHAIRS

First Vice President James R. Moseley of Jacksonville exhibited the design of a Certificate of Appreciation to be sent to the immediate past chairs of

Committees, which received the unanimous approval of the Board. Vice President Moseley noted that because of the By-Law restricting service of Committee chairs to four years, more than half of the Association's current Committee chairmen were new to their positions this year.

Vice President Moseley also reported on the meeting of all Committee Chairs which took place on Tuesday, November 1, with all the Officers of the Association present. At this meeting each Committee Chair outlined the plans for their respective committees. These plans will be submitted in writing to President Hooper. Vice President Moseley expressed his appreciation to all the Officers for their participation in this meeting which was well received and attended.

AMICUS BRIEFS

President Hooper, Vice President Moseley and Board Member John Edginton reported respectively on three *amicus* briefs that had been or were to be filed on behalf of the Association. The first is in the *Sky Reefer* case and is being prepared by Raymond Hayden of New York, Professor Michael Sturley of Austin and Sanford E. Balick of New York. The second is in the case of *Sea Savage v. Chevron* and is authored by Douglas Matthews of New Orleans and Professor Michael Sturley of Austin. Both of these cases involve conflicts between circuits. Discussion ensued as to whether or not the Association should take a position on the merits in the *Sky Reefer* case. The Board unanimously agreed that no position should be taken on the merits that case. It was noted that no position on the merits is being taken in the *Sea Savage v. Chevron amicus* brief, which had already been filed. In each case, therefore, the Association is taking no position on the merits but only asking the Supreme Court to resolve the conflict between the Circuits in the interests of uniformity.

An *amicus* brief has been filed in the case of *Dietrich v. Key Bank*, which presents *Fogel* case issues and is currently on appeal in the Eleventh Circuit. The authors of this brief were David McI. Williams of Baltimore, John Edginton of Emeryville and Bruce A. King of Seattle.

President Hooper expressed his deep appreciation on behalf of the Association to the authors of these *amicus* briefs, noting that the quality of scholarship and amount of effort that had gone into them was outstanding.

President Hooper then indicated that the Association may receive a request for an *amicus* brief in the *Gamma-10 v. American President Lines* case. This was a case in the Eighth Circuit where it was held that a shipowner cannot rely on the one-year COGSA limitation period contained in a Bill of Lading where damage

to cargo occurs beyond ship's tackle unless the shipper has been given a fair opportunity to negotiate different terms.

CMI MEETING IN SYDNEY

Dr. Frank L. Wiswall of Castine, Chairman of the CMI Committee, reported on the CMI's meeting in October of this year in Sydney, Australia, detailing the change in officer and executive council memberships. The Board received and approved reports of two of the Association's working groups in Sydney on the topics of Assessment of Pollution Damage and Mobile Offshore Craft. In addition, Vice President Howard McCormack of New York reported that, with respect to the General Average rules, the efforts of the working group had been to simplify and clarify the rules and not expand the role of General Average. The CMI approved new rules for General Average on October 8, 1995 with the hope that they will become active by agreement as soon as January 1, 1995.

Dr. Wiswall indicated that the Centenary Conference of the CMI will take place in Antwerp in June 1997. He also indicated that the CMI has decided to apply for consultive status in the United Nations. It is probable that an American will be the CMI's permanent representative to the U.N. In that eventuality, Dr. Wiswall has been asked to fill that position.

CONFLICT OF NOVEMBER MEETINGS WITH HALLOWEEN

Membership Secretary Burrell pointed out that there was often a conflict between the scheduling of our fall meetings and Halloween. She pointed out that this often prevented members, particularly younger members, from taking part in what to children is an important family event. The general consensus of the Board was that this conflict, as well as any conflict with Election Day, could be resolved by moving the New York fall meetings to the third Friday in October. It was noted that the 1995 Fall Meeting in Hawaii would take place from October 15 to October 20 so that it presented no such conflict. President Hooper indicated that he would refer this matter, along with the Board's views, to the Ad Hoc By-Laws Committee for the appropriate recommendation and action.

ASSISTANCE TO FEDERAL JUDICIAL CENTER

Membership Secretary Burrell also reported that the Federal Judicial Assistance Center plans to send a questionnaire to selected members of the Association concerning the Center's study of unresolved Circuit conflicts. She noted that it was important for members so contacted to respond as requested.

RUSSIAN SEMINAR

President Hooper expressed his thanks to Paul Edelman of New York who attended a maritime law seminar in Russia, at his own expense. He will be submitting an article to the MLA Report on this Seminar.

IMO ARREST CONVENTION

Board member Neal D. Hobson of New Orleans advised that the IMO has announced that as part of its 1995-1996 agenda it intends to revisit its Arrest Convention in light of its more recent Liens and Mortgage Convention, which has not yet taken effect. President Hooper indicated that he would appoint an *ad hoc* committee to determine what input the Association should make in connection with this development.

STOWAWAYS

Board Member David A. Nourse of New York, Chairman of the Committee on Carrier Security, reported that Congress has recently enacted legislation, the effect of which is that vessels are no longer obligated to detain stowaways until repatriation occurs.

PROPOSED AMENDMENT TO RULE 9(h)

Board Member John Edginton of Emeryville, Chairman of the Committee on Practice and Procedure, reported on a request received from the Federal Rules Advisory Committee for the Association's views with respect to proposed amendment to Rule 9(h) and 28 U.S.C. Section 1292(a)(3). It was his recommendation, which the Board unanimously approved, that the Association take no position with respect to these proposed amendments, which concerned the question of interlocutory appeals in non-admiralty causes of action that were pendent with admiralty causes of action.

AD HOC COMMITTEE ON STATE CERTIFICATION

The Board considered and approved the recommendation and written report of Graydon Staring of San Francisco, Chairman of the Ad Hoc Committee on State Certification Programs and approved all the recommendations contained in the Report. A copy of this report will be appended to the original of these minutes. Among the Committee's recommendations were: (1) that the Association should promptly consider strengthening its qualification and screening process and become a certified organization either under the aegis of the ABA or on

some other basis, and (2) that the Florida Bar be advised of the MLA's view that state bars or institutions are not the appropriate bodies to establish standards and regulate expertise in admiralty practice.

The Board also authorized Mr. Staring to prepare and submit for Board approval a letter or report to the Florida Bar expressing the position of the Association as reflected in the Ad Hoc Committee's Report.

The Board then considered, but rejected, a proposal that a letter be sent to the Florida Bar president concerning professionalism of attorneys in the context of that Bar's Petition for Certiorari of a recent holding by the Eleventh Circuit that a Florida Bar rule which prohibits lawyers' solicitation within thirty days of an accident was unconstitutional.

1995 FALL MEETING IN HAWAII

Warren J. Marwedel reported that arrangements for the Association's 1995 fall meeting at the Hyatt Regency in Kauai, Hawaii were proceeding smoothly.

CLASSIFICATION SOCIETIES

President Hooper indicated that he was considering the formation of a committee on classification societies. It is possible that the CMI might address problems facing classification societies, and that the Association would be asked to comment.

ABA

The Association has been asked to the report to the ABA any matters it wishes considered by the ABA House of Delegates mid-winter meeting by November 21, 1994. President Hooper intends to advise the ABA that the Association does not wish to submit any matters to be considered at this time.

PRESIDENT'S SPEAKING ENGAGEMENTS

President Hooper reported that he had spoken at seminars at Louisiana State University and Houston and is scheduled to speak at the Tulane seminar in March as well as at a seminar on electronic charts in New Orleans just prior to the Tulane seminar.

1999 MEETING SITE

Secretary Dorsey, reporting for the Site Selection Committee, indicated that sites in Puerto Rico (El Conquistador), Naples, Florida (Ritz-Carlton) and Para-

dise Island, Bahamas (Atlantis) were currently under consideration for the 1999 Fall Meeting. It is hoped that a recommendation can be made by March.

The meeting then adjourned to the Harvard Club for lunch. During lunch the following reports were made.

COMMITTEE ON CARRIAGE OF GOODS

Board Member George Chandler, Chairman of the Committee on Carriage of Goods, reported that he hopes to present any proposed revisions to COGSA at the 1995 Spring Meeting of the Association.

COMMITTEE ON DINNER ARRANGEMENTS

Christina Whitaker reported on the arrangements for the Dinner Dance to be held at the Marriott Marquis on Friday, November 4. President Hooper expressed the gratitude of the Association to Ms. Whitaker and her Committee for all of their hard work in planning and supervising this event. Over 800 members and their guests are expected to attend.

There being no further business to come before the Board, the meeting adjourned at approximately 2:00 p.m.

Respectfully submitted,
William R. Dorsey, III
Secretary