

**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, May 4, 1995**

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

James F. Moseley, First Vice-President
Howard M. McCormack, Second Vice-President
William R. Dorsey, III, Secretary
Marshall P. Keating, Treasurer

Lizabeth L. Burrell, Membership Secretary
George W. Healy, III, Immediate Past President

The following Board members were present:

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

Joining the meeting in progress by invitation were Warren J. Marwedel of Chicago, Christina M. Whitaker of New York, Edward V. Cattell, Jr. of Cherry Hill, Kenneth H. Volk of Portsmouth, David McL. Williams of Baltimore, Philip A. Berns of San Francisco, and Robert J. Zapf of New York.

SECRETARY'S REPORT

Secretary, William R. Dorsey, III, of Baltimore, reported that the Minutes of the Board of Directors Meeting held at the Plimsoll Club, New Orleans, on Tuesday, March 14, 1995 had been circulated to all of the members of the Board and to the membership. Upon motion duly made and seconded, the Minutes of the Board of Directors Meeting of March 14, 1995 were approved and accepted.

Secretary Dorsey reported that in accordance with By-Law Section 504 he had mailed to all Association members a copy of the Resolution proposed by the Committee on Carriage of Goods, the Ad Hoc Study Report on which said Resolution was based, and all Committee Dissenting Reports. He also reported that in accordance with Section 801 relating to Amendments of the By-Laws, he had circulated to all the members of the Board, more than ten days prior to this meeting, a copy of the report by the Ad Hoc Committee to amend the By-Laws, a proposed Resolution on the By-Law changes, and a further amendment proposed by Secretary Dorsey.

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

TREASURER'S REPORT

Treasurer, Marshall P. Keating of New York, reported on the cash on hand and investments as of March 31, 1995, which reflected the Association's sound financial position. He also advised that the transfer of our data processing and mailing services from Barrister to Messrs. Brock, Shechter & Polakoff was going smoothly and had all but been completed. He also reported that collections on the dues bills were proceeding satisfactorily.

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

MEMBERSHIP SECRETARY

Membership Secretary, Lizabeth L. Burrell, reported that the Association's total membership is 3,426 as of May 4, 1995. She presented the names of thirty-seven applicants for Associate membership, and one applicant for Judicial membership, the Honorable G. Thomas Porteous, United States District Judge for the Eastern District of Louisiana.

Upon motion duly made and seconded, the thirty-seven Associate applications and one Judicial application were unanimously elected.

Membership Secretary Burrell also reported that the Proctor Admissions Committee had recommended that twenty-six Associate members be advanced to Proctor status. Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved and the twenty-six Associate members were granted Proctor status.

In addition, Membership Secretary Burrell indicated that nine Non-Lawyer applicants had been recommended for Non-Lawyer membership. Those recommended are: James H. Falstrault, Richard J. Horan, Claire C. Jones, Charles F. Killian, Deirdre H. Littlefield, Capt. Alexandros Mastoras, Robert H. Pouch, Roy Salley, and Peter J. Scrobe.

Upon motion duly made and seconded, the nine Non-Lawyer applicants were unanimously elected to Non-Lawyer membership.

Membership Secretary Burrell also moved the admission of Professor Charles Black, as an Academic member. Upon motion duly made and seconded, Professor Charles Black was unanimously elected to Academic membership.

The list of all of the successful candidates for membership and admission to Proctorship status, and Ms. Burrell's written report, is attached to the original of these Minutes.

Membership Secretary Burrell also reported, with regret, the death of the following members: The Honorable Bernard G. Barrow of Charlottesville,

Andrew C. Hecker of Philadelphia, Henry J. Ottaway of New York, and John H. Tappan of Point Clear.

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

AUGUST 1995 OFFICERS' AND BOARD OF DIRECTORS' MEETING

The Board unanimously agreed upon the date of August 11, 1995, for the next Officers' meeting, and Saturday, August 12, 1995, for the next Board of Directors meeting. Both of these meetings will take place in Baltimore.

MEETING OF COMMITTEE CHAIRS

Second Vice-President Howard M. McCormack of New York reported that a meeting of all Committee Chairs had been held on Tuesday, May 2, 1995. At this meeting, all of the Committee Chairs reported on the plans and activities of their respective Committees.

CERTIFICATE OF APPRECIATION TO PAST CHAIRS

President Chester D. Hooper indicated that the Certificates of Appreciation for immediate past Chairs have been prepared, and that he expects that they will be mailed within the next week.

COMMITTEE ON PRACTICE AND PROCEDURE

Board member, John A. Edginton of Emeryville, Chair of the Committee on Practice and Procedure, reported that the stylistic amendments to the letter Rules of the Federal Rules of Civil Procedure were still under consideration by the Federal Rules Advisory Committee. His Committee was continuing to liaise with Mark O. Kasanin of San Francisco, a member of the Association who is also on the Advisory Committee. Mr. Edginton reported that he had received indications that it was appropriate for him to forward the Association's comments with respect to the confusion in letter rules C and E concerning the use of the word "claimant." The comments of the Association had been approved at a previous meeting, and Mr. Edginton reported that he had now forwarded these comments on to the Advisory Committee.

Mr. Edginton also indicated that he was pleased to report that the Advisory Committee has agreed with and accepted the Association's position that interlocutory appeals should be permitted in maritime claims where cases involve both maritime and non-maritime claims. The Advisory Committee will be preparing an amendment to Rule 9(h) on this point.

Mr. Edginton then indicated that Association member Michael Marks Cohen had written President Hooper expressing concern about the unacceptable

number of unpublished opinions in the Federal Courts, and the fact that there was no unanimity among the various districts as to how unpublished opinions could be used or treated. President Hooper had designated the Committee on Practice and Procedure to look at this problem, and Mr. Edginton indicated that his Committee would be taking up that question to see what, if any, remedial action would be appropriate.

Finally, of particular concern, Mr. Edginton indicated that he had only recently learned on Wednesday, May 3, 1995, that the new Coast Guard authorization bill, H.R. 1361, contained a provision that would allow introduction into evidence of factual findings in Coast Guard casualty reports, but would deny supporting testimony by Coast Guard personnel without permission of the Secretary of Transportation unless the government was a party. Discussion was had on the ramifications of this proposed provision. After discussion, on motion duly made and seconded, the Board approved a recommendation that the Practice and Procedure Committee communicate to the Congress the Association's position that this provision should be removed from the Bill and subjected to full discussion.

IMO LEGAL COMMITTEE

Board member Neal D. Hobson of New Orleans reported on the IMO Legal Committee. It appears that there may be a diplomatic conference in April or May of 1996 to consider a draft HNS Convention. The Association's Committee on the Transportation of Hazardous Substances will study the position the Association should take and will report its recommendation in due course.

In addition, Mr. Hobson indicated that there was on the IMO Legal Committee docket, for action at its meeting in October of this year, the Convention on Off-Shore Mobile Craft and the Arrest Convention. In addition, it appears that the IMO Legal Committee will discuss a Wreck Removal Convention.

ALTERNATE DISPUTE RESOLUTION

Board member David A. Nourse of New York reported on the activities of the Committee on Alternate Dispute Resolution. He indicated that that Committee was in the process of modifying the Association's Rules of Conciliation. In addition, he indicated that the Committee was requesting that a questionnaire be mailed to all members to obtain information that would form the basis for the creation by the Association of a roster of Conciliators. He was also requesting that information on educational programs on Conciliators be mailed to the membership. President Hooper indicated that the request would be taken under consideration, and that he intended to consult as appropriate with other organizations concerning this matter.

AD HOC COMMITTEE ON MARINE INSURANCE ACT OF 1906

Edward V. Cattell, Jr. of Cherry Hill, Chair of the Ad Hoc Committee on the Marine Insurance Act of 1906, reported on the activities of his Committee and the study of the British Marine Insurance Act of 1906. He indicated that the chaos created by *Wilburn Boat* had prompted this study and a project to draft a U.S. marine insurance act. He stressed that any such act would be a clarification of existing law and not a bill that would provide for regulation of marine insurance.

AMENDMENT TO BY-LAWS

Past President Kenneth H. Volk of Portsmouth, Chair of the Ad Hoc Committee on Amendments to the By-Laws, presented the report of his Committee on proposed By-Law amendments. Many of the recommended amendments were cosmetic in nature, but three were substantive. The first was a change of the date of the Fall Meeting to the third Friday in October. The second was to limit the President of the Association to two terms of one year each. This is consistent with our present practice. The third substantive position was to add a By-Law that provided that no member of the Nominating Committee was eligible for any office under consideration by that Committee. A resolution incorporating the amendments recommended by the Ad Hoc Committee was proposed and seconded. Thereupon, upon motion made by Secretary Dorsey and duly seconded, a change to the second sentence of the proposed amendment to By-Law 801 was made as follows:

“These By-Laws may also be amended by a majority vote of those present at any meeting of the members of the Association, provided the Secretary, or his designee, shall have mailed the text thereof to the members at least fifteen (15) days prior to the meeting at which the amendment is to be acted upon.”

This amendment was passed unanimously. Thereupon the resolution embodying the changes recommended by the Ad Hoc Committee, as amended, was unanimously passed. A copy of the Resolution, as amended and as passed, is attached to the original of these Minutes.

President Hooper then discharged Mr. Volk's Committee, expressing the appreciation of the Association for the fine work of Mr. Volk and his Committee.

There followed a discussion of other possible amendments. Board member George Chandler of New York suggested that the Board should be empowered to waive the notice provision of By-Law Section 801 pertaining to the Board's authority to amend the By-Laws. Board member John A. Edginton of Emery-

ville suggested that the By-Laws should provide for voting by written absentee ballot by the members in addition to the present proxy provision. There was also discussion of the timing requirements of By-Law Section 504. President Hooper indicated that he would appoint a new Ad Hoc Committee to review these and other proposals.

COMMITTEE ON MARINE FINANCING

David McI. Williams of Baltimore, Chair of the Committee on Marine Financing, reported on the activities of his Committee. Of particular note was the fact that the Coast Guard had issued a Notice of Proposed Regulation that would permit the filing of documents by fax. There appears to be some doubt as to whether any statutory authority exists for this regulation. Accordingly, Mr. Williams sought approval from the Board to send a letter to the Coast Guard asking it to hold this Regulation in abeyance until clear statutory authority exists. He pointed out that the Coast Guard Authorization Bill, H.R. 1361, which is presently on a fast track before Congress, did contain such clear authority.

Upon motion duly made and seconded, the Board voted the approval sought by Mr. Williams and authorized him, or his designee, to forward such a letter to the Coast Guard and further authorized the President, or his designee, to testify before Congress as appropriate in support of this position.

Mr. Williams also reported that a joint subcommittee of his Committee and the Committee on Practice and Procedure has prepared mortgage foreclosure forms. These forms total some 200 pages, and Mr. Williams was soliciting ideas as the best way to have these forms printed and distributed to members. The suggestion was made that the publisher of *Benedict on Admiralty* should be contacted to explore possible inclusion in that publication.

HONORARY MEMBERS EX OFFICIO

Philip A. Berns of San Francisco, Chair of the Committee on Government Liaison, recommended that the Federal Maritime Administrator, the Judge Advocate General of the United States Navy, and the Chief Counsel of the Coast Guard be elected Honorary Members. It was pointed out that the By-Laws make no provision for membership by position, but merely refer to individuals obtaining membership. Accordingly, the Board approved the election as Honorary Members Ex Officio for the term of their respective offices the following: VADM (Ret.) A. J. Herberger, Federal Maritime Administrator; RADM Harold E. Grant, Judge Advocate General, United States Navy; and RADM John Shkor, Chief Counsel of the Coast Guard.

The Board will consider appropriate amendments to the By-Laws so that Ex-Officio Honorary members named by position only can become members.

ARREST CONVENTION

Robert J. Zapf of New York reported on a Joint Inter-governmental Group of Experts on Maritime Liens and Mortgages and Related Subjects in connection with the JIGE draft articles for a convention on arrest of ships. He indicated that since the Seventh Session of the JIGE concluded there has been considerable discussion and correspondence over the most efficient way to address the substantive issues left open at that Session. A decision has been made to encourage the appointment of an IMO/UNCTAD joint intersessional working group to address these issues. Mr. Zapf delivered a written report on the status of the Arrest Convention, a copy of which will be attached to the original of these Minutes.

CARRIAGE OF GOODS

Board member George F. Chandler, III, of New York, Chair of the Committee on the Carriage of Goods, reported that at a meeting on Wednesday, May 3, 1995, his Committee had approved and adopted a Motion to Recall its proposed Resolution so that further review and discussion could be had on the proposal. He indicated that a schedule of meetings which would be circulated to all members indicating the dates, times, and places at which various aspects of the proposed resolution would be discussed.

REQUEST TO SUPPORT RATIFICATION OF THE LAW OF THE SEA CONVENTION

Board member Joseph D. Cheavens of Houston, the Board liaison for the Committee on International Law of the Sea, reported that this Committee has taken under consideration a request by the State Department that the Association lend its support to efforts to obtain ratification of the Law of the Sea Convention, which the President has submitted to the Senate.

HAWAII MEETING

Warren J. Marwedel of Chicago, Chair of the 1995 Committee on Arrangements, reported on the preparations for the Fall Meeting in Hawaii. He indicated that the first mailing on this meeting will go out sometime shortly after the Association's meeting on Friday, May 5, 1995. He also indicated that it appears that the registration fee will be in the \$400 range. He noted that his Committee is being asked to absorb costs that in the past were absorbed by the Association in general, including, for instance, the cost of the CLE program. This is one of the reasons for the rise in the registration fee. It was noted by a number of board members that, given the number of activities and events covered by the registration fee, the fee compares favorably with what other organizations charge.

AMICUS CURIAE BRIEFS

Board member George F. Chandler, III, of New York, reported that the *Sky Reefer* case, in which the Association had filed a brief Amicus Curiae, had been argued before the Supreme Court, but had not yet been decided.

PRESIDENT'S REPORT

President Chester D. Hooper expressed his appreciation to Warren M. Faris of New Orleans for attending, at his own expense, the British Maritime Law Association Dinner in London on behalf of our Association. President Hooper also indicated that he had received a number of invitations to the Commercial Court Centenary Dinner to be held in London on October 2, 1995. Any members of the Association who wish to attend that dinner should contact Mr. Hooper.

President Hooper also indicated that he would be attending the Canadian Maritime Law Association meeting in Nova Scotia next month and the SEALI Conference in June of this year.

President Hooper expressed his appreciation to out-going Board members, Richard C. Binzley of Cleveland, Denise S. Blocker of San Francisco, Joseph D. Cheavens of Houston and David A. Nourse of New York, for their contributions as members of the Board for the past three years.

The meeting then adjourned to the Harvard Club for lunch. During lunch the following report was made:

COMMITTEE ON DINNER ARRANGEMENTS

Christina M. Whitaker of New York reported on the arrangements for the dinner to be held at the Marriott Marquis on Friday, May 5, 1995. Over 1,350 members and their guests are expected to attend. President Hooper expressed the gratitude of the Association to Ms. Whitaker and her Committee for all their efforts in planning and supervising this event.

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

RESOLUTION AMENDING BY-LAWS

Resolved: That the following Amendments to the By-Laws of the Maritime Law Association of the United States be, and they hereby are, adopted:

1. Section 201 is amended to read as follows:

201. MEMBERSHIP CLASSES

Any person who is interested in the objectives of the Association and who can satisfy the qualifications required for membership in any of the below designated classes shall be eligible for membership. There shall be seven (7) classes of members:

1. Proctor in Admiralty
2. Associate Lawyer
3. Non-Lawyer
4. Honorary
5. Judicial
6. Academic
7. Life

Members shall be elected by the Board of Directors, with the exception of Life Members, who shall automatically be elevated to that category in accordance with the requirements of Section 209.

2. Section 209 is amended to read as follows:

209. DUES

The amount of annual dues of members shall be fixed by the Board of Directors and shall be payable on May 1 of each year. The following classes of members shall be exempt from the payment of dues:

1. Honorary, Judicial and Academic members.
2. Members in good standing who have, as of May in any year, maintained membership in the Association for 40 years. Members so exempted shall be designated as Life Members.

3. Section 210 is amended to read as follows:

210. REGULAR MEETINGS

Unless the President, with the concurrence of the Board of Directors, shall fix some other date, the annual meeting of the Association shall be held on the first Friday of May, and a Fall meeting shall be held on the third Friday of October of each year. The presence of one hundred (100) members entitled to vote shall constitute a quorum at any meeting of the Association and, except as provided in Arti-

cle 7 of the Articles of Incorporation, actions shall be taken by a majority of those present and voting.

4. Section 211 is amended to read as follows:

211. PROXY VOTING

In all instances in which proxy voting is authorized by the President, any member entitled to vote may deliver to the Secretary, or his designee, not less than twenty-four (24) hours before the date appointed for the meeting at which the vote is to be taken, or within such later time as the Secretary, or his designee, may fix, which shall not be later than the time appointed for the opening of the meeting, a duly signed instrument as appears in the form annexed in Appendix A to these By-Laws.

Only the member appointed in such instrument shall be authorized to cast the vote, and such vote shall have the same effect as any other vote.

In addition to his own vote, a member may cast one (1) vote for each proxy held.

5. Section 301 is amended to read as follows:

301. OFFICERS

Officers of the Association shall be a President, a First Vice-President, a Second Vice-President, a Secretary, a Treasurer and a Membership Secretary. They shall be elected at the annual meeting of the Association to serve for one (1) year and until their successors have been elected. Only a Proctor member shall be eligible for election as an officer. The President shall serve no more than two (2) terms.

6. Section 302 is amended to read as follows:

302. BOARD OF DIRECTORS

There shall be a Board of Directors composed of twelve (12) elected members, divided into three (3) classes, and the President, the Vice-Presidents, the Secretary, the Treasurer, the Membership Secretary and the Immediate Past President of the Association.

Four members of the Board of Directors shall be elected at the annual meeting of the Association to serve for a term of three years.

The Board of Directors shall fill vacancies in all elective offices, with the exception of the office of President, and the persons so appointed shall hold office until the next annual meeting.

7. Section 305.3 is amended to read as follows:

305.3

The **Secretary** shall keep a record of the proceedings of all meetings of the Association and of such other matters as directed by the President or the Board of Directors.

He shall notify the Officers and all committee members of their election or appointment, shall issue notices of all meetings, and, in case of special meetings, shall add a brief notice of the purpose of the meeting.

He shall be the keeper of the seal of the Association and shall perform such other duties as may from time to time be delegated to him by the President or by the Board of Directors.

8. Section 305.4 is amended to read as follows:

305.4

The **Treasurer** shall collect and disburse all funds of the Association and shall keep regular records and accounts.

At meetings of the Association and the Board of Directors, he shall report in writing on the Association's financial condition.

He shall perform such other duties as may from time to time be delegated to him by the President or by the Board of Directors.

9. Section 305.5 is amended to read as follows:

305.5

The **Membership Secretary** shall keep a complete roll of the members, process applications for membership, notify new members of their election, and publish and distribute a directory of the members.

He shall perform such other duties as may from time to time be delegated to him by the President or by the Board of Directors.

10. A new Section 305.6 shall be added to read as follows:

305.6

Wherever a masculine pronoun appears in these By-Laws, it is to be read as applying to either gender.

11. Section 402 is amended to read as follows:

402. DUTIES OF THE NOMINATING COMMITTEE

The Nominating Committee shall propose a slate of nominees for election as officers and directors and present it to the membership at the annual meeting of the Association. No member of the Nominating Committee shall be eligible for election to any office under consideration by that Committee.

12. The fourth paragraph of Section 504 is amended to read as follows:

The Secretary shall, at least *twenty (20)* days prior to the date of the meeting at which such reports are to be acted upon, mail copies of both reports, together with a notice of such action by the President, to each member of the Association at his recorded address.

13. Sections 703.4, 703.5, 703.6, and 703.7 are misnumbered and are renumbered as Sections 702.4, 702.5, 702.6, and 702.7 respectively.

14. Renumbered Section 702.4 is amended to read as follows:

702.4

Upon receipt of the request, the President shall consult with the First and Second Vice-Presidents, and may consult with the Chair(s) of the appropriate Association Committee(s), and if after such consultation the President considers there is merit to the request, he shall then promptly send copies of all relevant material, including the written request, opposition papers and lower court decisions, if any, to each director, calling for a vote. For this purpose the President, or his designee, may poll the Board of Directors by any form of communication.

15. Renumbered Section 702.5 is amended to read as follows:

702.5

If after consulting with the First and Second Vice-Presidents, the President considers there is no merit to the request or if, after submitting the request to the Board of Directors, less than two-thirds of the total membership of that Board approve *amicus* participation, the President shall advise the requesting person that the Association will not enter the litigation as *amicus curiae*.

16. Renumbered Section 702.6 is amended to read as follows:

702.6

If the Board of Directors approves the request by a vote of at least two-thirds of the Board membership, the President shall thereupon assign the responsibility for preparing the *amicus* brief and other necessary documents for action on behalf of the Association in favor of the views authorized by the Board of Directors.

17. Section 801 is amended to read as follows:

801.

These By-Laws may be amended by a two-thirds vote at any meeting of the Board of Directors; provided, however, that notice of any proposed amendment, together with its text, shall have been distributed by the Secretary, or his designee, to the Directors at least ten (10) days prior to the meeting at which the amendment is to be acted upon. These By-Laws may also be amended by a majority vote of those present at any meeting of the members of the Association, provided the Secretary, or his designee, shall have mailed the text thereof to the members at least fifteen (15) days prior to the meeting at which the amendment is to be acted upon.

18. The Section relating to the Seal of the Association is renumbered as Section 10 and Section 1001.