

**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 2, 1996

The meeting was called to order by Chester D. Hooper at 9:30 a.m. In addition to President Hooper, the following officers were present:

James F. Moseley, First Vice-President
Howard M. McCormack, Second Vice-President

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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:

George F. Chandler, III
John A. Edginton
Brendan P. O'Sullivan
Thomas S. Rue
George William Birkhead
George D. Gabel, Jr.
James B. Kemp, Jr.
Patrick J. Bonner
Donald C. Greenman
Raymond L. Massey
Jerome C. Scowcroft

Joining the meeting in progress by invitation were Warren J. Marwedel of Chicago, Winston E. Rice of New Orleans, John P. Vayda of New York, Marilyn Lytle of New York, Theodore S. Cunningham of New York, Graydon S. Staring of San Francisco, Dr. Frank L. Wiswall, Jr. of Castine, and Robert C. Clyne 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 Faculty Club of the University of California, Berkeley, on Saturday, March 23, 1996, had been circulated to all of the members of the Board. Upon motion duly made and seconded, the Minutes of the Board of Directors Meeting of March 23, 1996, were approved and accepted.

Secretary Dorsey further reported that the Report of the Committee on the Carriage of Goods and accompanying documents, the Minority Reports, and the Notice of the President, had been mailed to all members of the Association more than twenty (20) days prior to the date of the scheduled May 3 meeting, in accordance with By-Law Section 504.

Finally, Secretary Dorsey reported that, as directed by the Board, he had prepared and filed an amicus brief in support of a Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit in the case involving the Crane Vessel TITAN V. This was a case in which the Fifth Circuit held, in an

unpublished opinion, that Section 1605(b) of the Foreign Sovereign Immunities Act authorized an *in rem* suit against, and arrest of, vessels owned by a foreign state engaged in commercial activity.

Upon 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 as of March 31, 1996, which reflected the Association's sound financial position. Mr. Keating then requested that the mileage allowance for personal car use in the Association expense policy be increased from 29 cents to 31 cents per mile in keeping with the policy of the federal government. Upon motion duly made and seconded the Board unanimously approved this increase. He also moved the passage of a Resolution authorizing the opening of a bank account to handle funds for the Association's 1997 meeting to be held in Palm Springs, California. This motion was duly seconded and unanimously passed. A copy of this Resolution is attached to the Minutes of this meeting.

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

MEMBERSHIP SECRETARY

Membership Secretary Lizabeth L. Burrell of New York reported that the Association's total membership as of May 2, 1996, was 3,603. She presented eighteen (18) applicants for Associate membership. She also indicated that the Honorable Edith Brown Clement, United States District Judge for the Eastern District of Louisiana, had been proposed for Judicial membership, and that Professor John R. Pagan, Director, Global Law School Program, New York University School of Law, had been proposed for Academic membership. Membership Secretary Burrell also indicated that the Proctor Admissions Committee had recommended eleven (11) Associate lawyers for advancement to Proctor status. Upon motion duly made and seconded, the candidates for Associate membership, Proctor membership, Judiciary membership, and Academic membership were unanimously elected.

In addition, Membership Secretary Burrell indicated that one (1) non-lawyer applicant, Joan D. Wilson, President and Chief Operating Officer of Marine Office of America Corporation had been recommended for Non-Lawyer membership. Upon motion duly made and seconded, Ms. Wilson was unanimously elected to Non-Lawyer membership.

Membership Secretary Burrell also reported, with regret, the death of the following members:

Jack L. Allbritton of Houston
Richard B. Barnett of New York
Randall C. Coleman of Baltimore
James O. Davis, Jr. of Pinellas Park
Charles E. Dunbar, III, of New Orleans
Frederick Fish of Short Hills
Jeome V. Flanagan of Boston
Bruno A. Forel of New York
Michael D. Martocci of New York
Michael K. McCormick of New York
William J. Prout of Newark
Sherman F. Raphael of Scottsdale
Edwin H. Underwood of Miami
Eugene Underwood of Orlando
George L. Varian of Oscala
Edward J. White of Gloucester

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

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, April 30, 1996. He distributed a copy of the collection of written reports that had been submitted to him by each Committee Chair.

CALENDAR OF MARITIME EVENTS

Second Vice-President McCormack also reported further on the Calendar of Maritime Events that he maintains. He indicated that a copy of this Calendar would be distributed periodically with other mailings of the Association.

COAST GUARD AUTHORIZATION BILL

Board member Patrick Bonner of New York indicated that the Coast Guard Authorization Bill was still being held hostage by various measures that had been attached to it, including the Cruise Ship Tort Reform Bill. However, guarded optimism was expressed that the Coast Guard Authorization Bill could be shaken loose from this other proposed legislation and could go forward on its own merits.

RECREATIONAL BOATING

Board member Donald C. Greenman of Baltimore reported on the work of the Recreational Boating Committee, indicating that the Committee would be presenting a Resolution for consideration of the membership at the meeting on May 3. This Resolution would propose a form of model state law to be urged on each state that is considering passage of legislation on recreational boating.

MARINE ECOLOGY COMMITTEE

John P. Vayda of New York, Chairman of the Marine Ecology Committee, submitted a Resolution on Reformation of the Natural Resource Damage Assessment Provisions of OPA '90. The Resolution was unanimously adopted by his Committee and states as follows:

RESOLVED, that the Maritime Law Association of the United States supports reform of the natural resource damage assessment ("NRDA") provisions in the Oil Pollution Act of 1990 ("OPA '90"). The maritime community is concerned that the final NRDA regulations promulgated by the National Oceanic and Atmospheric Administration ("NOAA"), which permit methods of damage assessment not generally accepted as scientifically valid, are vague and could be applied in an arbitrary or capricious manner. Additionally, NRDA reform is necessary to bring domestic damage assessment procedures in line with international guidelines on assessments which prohibit abstract quantification of "damage" calculated with theoretical models.

Accordingly, the Maritime Law Association urges Congress to adopt the following reforms:

- (1) OPA '90 be amended to require restoration plans to be cost-effective and cost-reasonable;
- (2) OPA '90 NRDA provisions be clarified so that the recoverable cost of the measures to restore, rehabilitate, replace, or acquire the equivalent natural resources will be reasonable and necessary to re-establish the ecologically significant functions of the affected resources and to restore the public uses of these resources;
- (3) OPA '90 be amended to eliminate recovery under "non-use" or "passive-use" theories since they are not statutorily-recognized damages under OPA '90;
- (4) OPA '90 be amended to require NOAA to issue regulations specifying that assessments should be site and spill specific; and

- (5) NOAA be required to enumerate and use cost-effective and generally established scientific methods and standards of assessment, which shall consider the views of all interested parties, so that NRDA's will be valid and reliable.

Upon motion duly made and seconded, the Board unanimously approved and adopted this Resolution.

SITE SELECTION COMMITTEE

Warren J. Marwedel of Chicago reported that the Hawaii meeting was a financial success. A copy of his report on the finances of that meeting is attached to the original of these Minutes. Mr. Marwedel then indicated that no site has as yet been selected for 1999. However, he indicated that there was no rush on this, and that his Committee anticipated having a recommendation by the October 1996 meeting of the Association, which would be well in advance of any time deadline set by any major resort.

He further indicated that his Committee is focusing on sites that are easily accessible, provide alternate housing, and are attractive to younger members of the Association, the criteria suggested by the Board in Hawaii. The Committee also had an extended discussion with Mr. Marwedel about the possibility of changing the format of the meeting, i.e., having the business meeting and banquet on Saturday and having only one morning of seminars instead of two.

INTERNATIONAL MARITIME LAW INSTITUTE

Dr. Frank L. Wiswall, Jr. of Castine appeared on behalf of the International Maritime Law Institute at Malta. This Institute was established under the auspices of the IMO and provides developing countries with unique facilities for post-graduate training and research in international law legislation. That organization will be attempting to raise funds from U.S. foundations and other groups through a reception or other function in October of this year. Dr. Wiswall requested a grant of \$1,750 from the Association to be used as seed money in connection with any such function. Upon motion duly made and seconded, Dr. Wiswall's request was granted.

ELECTRONIC DATA INTERCHANGE

George F. Chandler, III of Houston reported on the activities of the UNCITRAL working group on Electronic Data Interchange. That group has noted the extreme difference among nations as to how the same bill of lading would be treated. This has led to a proposal which is to be made by this working group to UNCITRAL at its meeting later this May that consideration be given to the

development of a new regime to cover every aspect of the carriage of goods, i.e., not just liability but also bills of lading, multi-modal transport, liens, etc.

OFF-SHORE MOBILE CRAFT

Winston E. Rice of New Orleans reported on the CMI working group on Off-Shore Mobile Craft, of which he is a member. This group was formed after the chilly reception by IMO of the Sydney redraft of the 1977 Rio-Draft Convention on Offshore Mobile Craft. The group has now been elevated to the status of an International Subcommittee. This Subcommittee met in April of this year in London. The Subcommittee concluded that, while it could come up with discussion points by the time of the CMI Centenary meeting in Antwerp in June 1997, it could not prepare a proposed treaty within that time frame. The Subcommittee has prepared a questionnaire that will go out to member associations.

Mr. Rice described the work of the Subcommittee as three-fold: (1) to carry the work forward so that the Treaty would be self-contained within four corners and not one that, as present, refers to other treaties; (2) to consider whether the Treaty should cover off-shore craft in their industrial mode as well as their transit mode; and (3) to consider whether the Treaty should cover fixed off-shore structures and artificial islands, as well as mobile craft.

BRIEFS AMICUS CURIAE

President Hooper expressed the gratitude of the Association to Thomas J. Wagner of New Orleans for preparing and filing an *amicus* brief on behalf of the Association in the *Exxon v. Sofec* case, and to Secretary William R. Dorsey, III, of Baltimore for preparing and filing an *amicus* brief on behalf of the Association in the *Crane Vessel Titan V* case.

OFFICER AND BOARD MEETING, JULY 1996

First Vice-President James F. Moseley of Jacksonville indicated that the next Officer and Board meetings will probably take place on July 12-13, 1996. The precise site has not been determined, but it appears likely that the site will be Newport, Rhode Island.

PRESIDENT'S REPORT

President Hooper indicated that George F. Chandler, III of Houston had been elected to Titulary membership in the Comité Maritime International. He also indicated that this Association had nominated William Birch Reynardson of London for membership *Honoris Causa* in the CMI, and that he had been elected to that membership.

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

AD HOC COMMITTEE ON STATE CERTIFICATION

Former President Graydon S. Staring of San Francisco reported on behalf of the Ad Hoc Committee on State Certification. The report of that Committee is as follows:

While your Committee recognizes that whether or not to advertise is a matter for each individual attorney to determine, nevertheless your Committee urges that members use great caution in doing so. Your Committee is continuing its efforts to work with the ABA and the States to establish and maintain recognition of the high standards of professionalism to which our Association is committed. It would, however, be unfortunate if a member precipitated a controversy with State bar authorities by the advertisement of MLA designation as a Proctor Member when State bar requirements or opinions had not been met. Even though the MLA would not be a direct party to it, the controversy might have serious implications for our authority and credit.

Your Committee, therefore, recommends that the Board advise members of the Association that they exercise utmost caution to avoid any confrontation with any particular State pending the continuing work of your Committee to resolve these complex issues.

COMMITTEE ON THE CENTENNIAL

Theodore S. Cunningham of New York reported on the activities of the Committee on the Centennial. He reported that the Committee had concluded that the focus of the Centennial celebration should be social activities that foster congeniality. In addition, a subcommittee has also been formed to recommend academic aspects. The Committee intends to employ a meeting planner to assist it in choosing appropriate activities and their location.

DINNER ARRANGEMENTS

Robert G. Clyne of New York, Chairman of the Dinner Arrangements Committee, reported on the arrangements made for the dinner to follow the meeting on May 3, 1996. He indicated that it was expected that over 1,400 people would be attending this dinner. On behalf of the Association, President Hooper expressed his appreciation and gratitude to Mr. Clyne and the other members of this Committee for their fine work in connection with the banquet arrangements.

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TRIBUTE TO PRESIDENT HOOPER

First Vice-President Jim Moseley then presented a tribute to President Hooper and expressed his appreciation and admiration to President Hooper for the service he had rendered to the Association for many years culminating in his Presidency. He concluded by presenting to President Hooper a signed Paul McGehee print entitled The Superliner "United States", Bound for Europe, Passes Lower Manhattan.

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