

**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
October 17, 1996**

The meeting was called to order by President James F. Moseley at 9:30 a.m.
In addition to President Moseley, the following officers were present:

Howard M. McCormack, First Vice President
William R. Dorsey, III, Second Vice President
Lizabeth L. Burrell, Secretary
Marshall P. Keating, Treasurer
Raymond P. Hayden, Membership Secretary
Chester D. Hooper, Immediate Past President

The following Board members were present:

George William Birkhead
Patrick J. Bonner
Lawrence J. Bowles

George D. Gabel, Jr.
Donald C. Greenman
Neal D. Hobson
James B. Kemp, Jr.
Marion E. McDaniel, Jr.
Gordon D. Schreck
Jerome C. Scowcroft
Thomas J. Wagner

At the invitation of President Moseley, Past President George W. Healy, III of New Orleans, Past President Richard W. Palmer of Philadelphia, Past President Graydon S. Staring of San Francisco, Past President Gordon W. Paulsen of New York, Warren J. Marwedel of Chicago, Thomas S. Rue of Mobile, A. Andrew Tsukamoto of New York and Canadian Maritime Law Association Secretary John A. Cantello joined the meeting in progress.

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported on a proposed amendment to the minutes of the March 1996 meeting of the Board of Directors, which would replace the fourth sentence of the first paragraph on page 10966 of MLA Document 723. The proposed amendment reads: "The second was a proposal that would require federal judges to permit lawyers to conduct voir dire. He indicated that while all the lawyer and judicial members of the Federal Rules Advisory Committee were in favor of these proposals the Judicial Conference of the United States was opposed to them."

Upon motion duly made and seconded, the amendment to the March 1996 Board meeting minutes was unanimously approved and accepted.

Secretary Burrell distributed the minutes of the July 13, 1996 Board meeting. Upon motion duly made and seconded, the minutes of the July 1996 meeting of the Board of Directors were unanimously approved and accepted. These minutes are published in the Proceedings of the October 1996 General Meeting.

TREASURER'S REPORT

Treasurer Marshall P. Keating of New York reported on the cash on hand and investments as of September 30, 1996, which reflected the Association's sound financial condition.

He updated the Board on the change in personnel handling our data processing and mailing services, and advised that he and Membership Secretary Raymond P. Hayden will travel to Buffalo to monitor the current situation.

Treasurer Keating also reported that our rate of collections on dues bills was generally satisfactory. Letters will be sent to members who are two years delinquent in their dues payment offering them a last chance to retain their membership.

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

Treasurer Keating also restated the travel policy of the Association, which is that no travel is to be undertaken at the Association's expense without the prior approval of the President.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary, Raymond P. Hayden of New York, reported that the total membership of the Association as of October 17, 1996 was 3,603 members. He presented forty-one applicants for Associate Lawyer membership, and two applicants for Judicial membership, the Honorable Harvey G. Brown, Presiding Judge for the 152nd Judicial District Court of Harris County, Texas, and the Honorable Ashley Hines, Circuit Judge for the Fourth Circuit District, Circuit Court of Mississippi.

Upon motion duly made and seconded, the candidates for Associate Lawyer membership and two Judicial nominee were unanimously elected.

Membership Secretary Hayden also reported that the Proctor Admissions Committee had recommended that twelve Associate Lawyer members be advanced to Proctor status. They are:

James W. Alcantara
Anthony J. Cuva
Giorgio Caflisch
John R. Hillsman
Patrick J. Maloney
Frank L. McNiff, Jr.

Pegeen Mulhern
Ronald Payne
Samuel F. Reynolds, Jr.
Matthew S. Schoor
Richard J. Serpe
Kyle D. Stallones

Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved and the twelve Associate Lawyer members were granted Proctor status.

In addition, Membership Secretary Hayden indicated that eight applicants had been recommended for Non-Lawyer membership. Those recommendations are:

Cheryl Acker-Wolchik
Gerald Ginter
Stanley Henslee
Brian Paradise

Matthew H. Pedersen
Joseph O'Connor
Brian Sales
Anthony J. Siciliano

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

Membership Secretary Hayden also moved the admission of Professor Craig H. Allen, Director of Law and Marine Affairs at University of Washington School of Law, and Matthew P. Harrington, Assistant Professor of Law at Roger Williams University School of Law, as Academic members. Upon motion duly made and seconded, Professor Allen and Mr. Harrington were unanimously elected to Academic membership.

The list of all the successful candidates for membership and admission to Proctor status, and Mr. Hayden's written report, are appended to the original of these minutes.

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

Daniel D. Douglas of Fort
Lauderdale

Gustave R. Dubus, III of
Savannah

Paul H. Murphy of New
York

Upon motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted.

Membership Secretary Hayden advised that the Directory for 1996-1997 had gone to the printers on June 17, 1996 and should already be in the hands of the membership.

SECOND VICE PRESIDENT'S REPORT

Second Vice President William R. Dorsey of Baltimore reported on the meeting of Committee Chairs which took place on October 15, 1996. At this meeting, the Chairs reported on the plans and activities of their committees and a booklet describing committee work and organization was distributed.

FIRST VICE PRESIDENT'S REPORT

First Vice President Howard M. McCormack of New York reported on the calendar of maritime events. First Vice President McCormack devised this calendar to keep members apprised of events likely to be of interest and to avoid scheduling conflicts among activities likely to attract the same attendees. An updated calendar will be sent to the members in November.

First Vice President McCormack also noted the conflict between the Association's October 1996 General Meeting and other events involving maritime practice. Consideration will be given as to whether there should be some adjustment of the Association's fall meeting date so as to minimize these conflicts.

INTERNATIONAL ACTIVITIES

1996 Protocol to 1976 Limitation of Liability for Maritime Claims Convention

Board member Donald C. Greenman of Baltimore, Chair of the Association's Limitation of Liability Committee, reported that in late July, the Coast Guard requested views about whether the United States should sign the 1996 Protocol to the 1976 LLMC, with the view that signature would lead to submission to the Senate for confirmation. Mr. Greenman formed a working group of the Limitation Committee to develop an Association position on this issue. After consultation and meetings in August, the working group submitted a Report to the Board in they recommended that the MLA adopt the following position:

The MLA favors the 1996 Protocol's increased limits. In the interest of uniformity the MLA also favors the 1996 LLMC in principle. The MLA is studying all the provisions of the 1976 LLMC to ascertain whether all of those provisions are compatible with U.S. domestic law.

The working group's proposed position was duly adopted by the Board of Directors. In furtherance of the last provision, the working group consulted the Chairs of several other committees in order to seek their views about whether the LLMC conflicted with U.S. law. Mr. Greenman reported that he had subsequently learned that the Coast Guard would most likely wait until after the upcoming national elections before adopting a view about any international conventions, including both LLMC and the HNS Convention.

International Maritime Law Institute

President Moseley reported on the assistance and support given by Dr. Frank L. Wiswall, Jr. of Castine to the International Maritime Law Institute, headed by Professor D.J. Attard. The Institute, which is in Malta, trains students from developing countries in maritime law. The Association has contributed to the Institute in order to further its goals of educating practitioners who lack the resources to obtain training elsewhere.

Comité Maritime International

Together with Professor Michael F. Sturley of Austin and George F. Chandler, III of Houston, Immediate Past President Chester D. Hooper travelled to London on September 27 and 28 to attend the third session of the CMI's international subcommittee on the Hague-Visby and Hamburg rules, and in particular, rules about liabilities arising under and negotiability of bills of lading. Those attending the meeting suggested that the Association attempt to persuade the State Department to urge UNCITRAL to enlist the CMI or some other private organization to draft rules about bill of lading liabilities and negotiability.

Immediate Past President Hooper reported that the attendees had great interest in the Association's proposal to amend COGSA. In a straw vote about the provisions of the proposal, a majority favored retention of the error in navigation defense, though in private discussions, reservations were expressed about its value, and about fifty percent favored retention of the error in management defense.

Immediate Past President Hooper expressed the view that the international subcommittee generally seemed to favor the MLA COGSA proposal.

President Moseley reported that the next meeting of the CMI will take place from Sunday, June 8 through Saturday, June 14, 1997 in Antwerp. Charles B. Anderson, Chair of the Association's Committee on Comité Maritime International, will continue discussions with the CMI representative about travel and hotel arrangements for this meeting. Topics will include carriage of goods. Members who wish to attend should act promptly when they receive travel information, as space is likely to fill up quickly. The conference will be held at the Antwerp Hilton, and the Association will attempt to reserve a block of rooms for members.

IMO

President Moseley reported that the IMO was meeting in London during the same week as our 1996 Fall meeting. Harold K. Watson of Houston, our CMI representative on Wreck Removal, together with many of our Coast Guard members, were attending the Wreck Removal International Subcommittee. Winston E. Rice of New Orleans represented the Association on issues involving Mobile Offshore Craft.

President Moseley also reported that he expects to receive more information from the Coast Guard about the scheduling of international meetings involving topics on which the Coast Guard may wish to have the views of the Association.

LEGISLATIVE UPDATE

Carriage of Goods

President Moseley reported on visits to Washington, D.C., together with Immediate Past President Hooper, Carriage of Goods Committee Chair Vincent M. DeOrchis of New York, George F. Chandler, III of Houston, and Professor Michael F. Sturley of Austin, several times over the past months, in order to meet with the staff counsel of the State Department about the Association's proposal to amend COGSA. It now appears that staff counsel will wait until the beginning of 1997 to present the MLA's proposal.

Immediate Past President Hooper was pleased to report that staff counsel were impressed by the fact that the Association's proposal was favored by a wide range of U.S. interests.

Professor Sturley will prepare a chart comparing the Association's proposal with the Hague-Visby and Hamburg rules for Karyn Booth, counsel to the National Industrial Transportation League, which represents most U.S. shippers.

OPA 90 Concursus and Natural Resource Damage Assessment

First Vice President McCormack advised the Board of a report from Matthew A. Marion of New York, one of the two Co-Chairs of the Ad Hoc Joint Subcommittee on OPA 90 Concursus, that there is no agreement on the language of a concursus provision and nothing will go forward in any event until after the national elections in November. NRDA revisions are also unlikely, particularly because treatment of environmental and liability issues are handled by different sectors within the government. By March, there will be a greater chance of determining the future course of both concursus and NRDA amendments.

Coast Guard Appropriations Bill

Board member Patrick J. Bonner of New York reported that the final language of the Bill reflected the compromise worked out between the Association and the Coast Guard on use of Coast Guard evidence relating to marine casualties. An earlier version of the Bill passed by the House had contained provisions that would have created major difficulties for maritime practitioners. The relevant portion of the Bill now reads:

Notwithstanding any other provision of law, no part of a report of a marine casualty investigation conducted under section 6301 of this title, including findings of fact, opinions, recommendations, deliberations, or conclusions, shall be admissible as evidence or subject to discovery in any civil or administrative proceedings, other than an administrative proceeding initiated by the United States. Any employee of the Department of Transportation, and any member of the Coast Guard, investigating a marine casualty pursuant to section 6301 of this title, shall not be subject to deposition or other discovery, or otherwise testify in such proceedings relevant to a marine casualty investigation, without the permission of the Secretary of Transportation. The Secretary shall not withhold permission for such employee or member to testify, either orally or upon written questions, on solely factual matters at a time and place and in a manner acceptable to the Secretary if the information is not available elsewhere or is not obtainable by other means.

Mr. Bonner expressed the view that it was the good relations between the Association and the Coast Guard, particularly those maintained by President Moseley and Past President Frank O'Brien, that assisted in achieving this compromise.

INS

Board member Gordon D. Schreck of Charleston reported that the provisions for stowaways in new legislation are much less onerous to shipowners. An owner's responsibility for processing is more lenient and limits have been placed on an owner's liability for deportation.

PRESIDENT'S REPORT

President Moseley thanked Board member Marion E. McDaniel, Jr. of Houston for his invitation to speak at the Houston Marine Insurance Seminar, where President Moseley delivered a paper on uniformity.

President Moseley described his efforts to keep Board members advised of all issues relevant to the management of the Association through his activity reports.

President Moseley also advised the Board that he would be sending out a President's Newsletter to all members in November which would include further information on the June 1997 CMI meeting.

President Moseley reported on the successful results of his invitations to the heads of maritime academies to become ex-officio members of the Association.

REPORTS ON COMMITTEE ACTIVITY

Young Lawyers Committee

A. Andrew Tsukamoto of New York, Chair of the Young Lawyers Committee, reported on the activities of that vital committee, as well as the fact that the committee now has active liaisons with all substantive committees of the Association. President Moseley stressed the importance of the committee to the future of the Association, and noted that two Board representatives had been assigned to the Young Lawyers Committee to ensure that guidance and resources were always available to its members. Board Member Gordon D. Schreck complimented Mr. Tsukamoto on the success of the committee's newsletter.

To increase the participation of the younger members of the Association, President Moseley suggested that Committee Chairs include the Young Lawyers Committee Liaison on all correspondence sent to a committee's Board representative and Vice Chair.

Committee on State Certification Programs

Past President Graydon S. Staring, Chair of this Committee, described the history of certification of admiralty practitioners. Years ago, the ABA had considered admiralty as a possible certified specialty, but the Association persuaded the ABA certification was not a necessity and that if any organization was going to certify admiralty practitioners, it ought to be the MLA. An outgrowth of these discussions was the Association's decision to create Associate Lawyer memberships and requirements for Proctor status in 1981.

During the intervening period, however, states have taken a hand in certification, and most notably, in 1995, Florida adopted a program of certification. The goal of the committee is to determine an MLA position with respect to state certification and, if possible, to assist in avoiding a piecemeal approach to this issue.

The ABA has a Standing Committee on Specialization and has set up a program to accredit other organizations to act as certifiers in certain specialized areas. Some states are adopting rules under which ABA accreditation can be accepted for certification under state rules.

Considering these developments, the committee voted ten to three to present to the Board a resolution, the text of which follows, to set up a working party to define the areas concerned and, if desirable, develop a protocol for qualifications for a specialty in maritime personal injury:

RESOLUTION

BE IT RESOLVED that:

1. The Association will explore the development of a program to establish standards for specialists in the practice of maritime personal injury and death law and for the possible recognition and designation of such specialists within the Association, in harmony with its Proctor membership classification, as certified Proctors in maritime injury.

2. To this end, the President will appoint a Working Party to produce a definition of the practice area involved and a protocol of

qualifications for such a specialty, including the scope of experience, examination and continuing education to be required, which should stand as minimum qualifications to be observed by an agency certifying specialists in this field, including this Association should it engage in doing so.

3. The Working Party should include representatives of the following Standing Committees:

- Continuing Legal Education
- Cruise Lines and Passenger Ships
- Maritime Personnel
- Maritime Products Liability
- Navigation and Coast Guard Matters
- Practice and Procedure
- Proctor Admissions
- Recreational Boating
- Stevedoring and Terminal Operations
- Young Lawyers

Other members may be appointed in the President's discretion.

4. The Working Party should be instructed to report within 12 months from the date it is constituted, and to advise the Board, through the President, of its progress at each scheduled Board meeting meanwhile.

5. The Working Party's report should be prepared in contemplation of its being circulated for comment to appropriate organizations, including such organizations as the Standing Committee on Specialization of the ABA and certain state certifying agencies and, if adopted by the Board, being published as the Association's standards for certification of specialists in the field.

6. The Working Party may be instructed by the President to report its views separately from its principal report on the practicality and desirability of any broader area of specialization and other collateral matters.

Upon motion duly made and seconded, the Board unanimously passed the Resolution.

Strategic Planning Committee

Chair George L. Waddell of San Francisco reported that his committee will try to make recommendations about strategic planning by next Fall's meeting.

Professionalism Committee

Ben L. Reynolds of New Orleans reported that the Professionalism Committee will try to determine how to maintain the high standards of professionalism that have historically existed within the maritime field and to build on this history to become leaders to other segments of the Bar.

Committee on the Centennial

Treasurer Keating reported that a site for celebration of the Association's Centennial has not yet been selected. The committee will meet on November 13, 1996 to continue its planning.

Committee on Planning and Arrangements for the 1997 Fall Meeting

Chair Thomas S. Rue of Mobile reported that there will be changes in the format of the Fall 1997 meeting in Desert Springs, which will take place during the week of October 27, 1997. The bulk of the programs will go forward on Wednesday through Friday, but there will be activities throughout the meeting week. The rooms, which overlook a mountain range, will have been wholly renovated. Other facilities include a modern golf course, twenty tennis courts and an 18-hole putting green.

A brochure will be distributed to the membership near the end of the year and the first formal mailing should go out shortly before the May 1997 meeting.

Site Selection Committee

Chair Warren J. Marwedel of Chicago reported that the Committee recommends Orlando, Florida as the site for the 1999 Fall meeting and will

[10631]

make a further recommendation in due course about possible locations within Orlando.

Upon motion duly made and seconded, the Board unanimously voted to authorize the committee to select Orlando as the site of the 1999 meeting, to enter into negotiations with the most favorable facility, and to enter into a contract with that facility after obtaining approval of the Association's Officers.

AMICUS BRIEFS

President Moseley reported that the form for seeking MLA *amicus* participation has been successful in reducing the strain on Association resources.

There being no further business to come before the Board the meeting was adjourned at noon.

Respectfully submitted,

Lizabeth L. Burrell
Secretary