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

**Held at the
Offices of Thompson Coburn in St. Louis, Missouri
on
July 19, 1997**

The meeting was called to order by President James F. Moseley at 9:55 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:

Denise S. Blocker	Marion E. McDaniel, Jr.
Lawrence J. Bowles	Gordon D. Schreck
David G. Davies	Jerome C. Scowcroft
Donald C. Greenman	James T. Shirley
Alfred J. Kuffler	Thomas J. Wagner
Raymond L. Massey	

At the invitation of President Moseley, James B. Kemp, Jr. of New Orleans, Chair of the Committee on ABA Relations, F. William Mahley of Houston, Vice Chair of the Committee on River and Ocean Towing, and Thomas S. Rue of Mobile, Chair of the Special Committee on Planning and Arrangements for the 1997 Fall Meeting, were also present.

President Moseley welcomed the new Board members and thanked Ray Massey and all our members in St. Louis for hosting this meeting.

SECRETARY'S REPORT

Secretary Burrell reported on a joint resolution proposed by the Ad Hoc Joint Subcommittee on OPA '90 Concursus designed to ease the difficulties encountered in multiple arrest situations. At the time of the May 1, 1997 Board meeting, the resolution had been approved by the Committees on Marine Ecology and Marine Financing (two of the Subcommittee's three parent Committees) as well as by the Practice and Procedure Committee's Subcommittee on Federal Rules and Statutes. The third parent committee, Practice and Procedure, had not yet met but later did so and approved the

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resolution. After the May 1 Board meeting, the Board studied the proposed resolution, and, by poll, on June 2, 1997 unanimously approved and adopted the following resolution:

RESOLUTION

WHEREAS, the objectives of the Maritime Law Association of the United States include the advancement of the Maritime Law of the United States to facilitate justice and promote uniformity; and

WHEREAS, three standing committees of the Association, the Committee on Marine Ecology, the Committee on Marine Financing and the Committee on Practice and Procedure, have unanimously approved and endorsed the attached proposed amendment (Exhibit "A") to Section 1017(c) of the Oil Pollution Act of 1990 (33 U.S.C. § 2717(c)) to provide for concursus proceedings for adjudication of all claims arising from oil spills from vessels;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Maritime Law Association of the United States that

The Maritime Law Association of the United States approves and recommends said proposed amendment for enactment by the Congress of the United States, and

That the Chairpersons of said standing committees and/or their designee are authorized to present and endorse said amendment on behalf of the Maritime Law Association of the United States to the appropriate legislative authorities for enactment by the Congress of the United States, and

Further, that said representatives are authorized to present, support and endorse any revision or modification of said amendment consistent with the goals of establishing concursus proceedings for the adjudication of claims arising from oil spills from vessels.

/s/ James F. Moseley

President,
The Maritime Law
Association of the
United States

EXHIBIT "A"

CONCURSUS PROVISION (5/7/97)

Section 1017(c) of the Oil Pollution Act of 1990 (33 U.S.C. § 2717(c)) is amended by striking subsection (c) and inserting the following:

(c) Procedure-

(1) A responsible party or guarantor who has complied with any financial responsibility requirements of section 1016 of this Act may, within 6 months of its designation under 1014(a), file a complaint in the appropriate United States District Court for limitation of, or exoneration from, liability pursuant to sections 1003 or 1004 of this Act. After an action is commenced pursuant to this paragraph, jurisdiction shall be retained over the action without regard to whether the requested relief is granted.

(2) Upon compliance with the requirements of paragraph (1), all claims and proceedings against a vessel, responsible party, guarantor, or their property with respect to an incident shall cease. Upon application of a responsible party or guarantor, the District Court shall enjoin the further prosecution of any action or proceeding in any State or United States court against a vessel, responsible party, guarantor, or their property with respect to any claim arising out of an incident. The court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation or exoneration, requiring them to present their respective claims to a responsible party or guarantor pursuant to section 1013(a). Thereafter, the court shall direct each claimant to file such claim in accordance with section 1013(c) within such time as the court may direct.

(3) Nothing in this section shall preclude a person from filing a concurrent limitation action under section 4203 of the Revised Statutes of the United States (46 U.S. App. § 183).

Secretary Burrell advised that the Proceedings of the May 1997 General Meeting were about to be distributed to the membership.

Secretary Burrell also reported on the rewriting of the Purposes section and committee descriptions in the Directory, remarking on the cooperation she had received from the committee chairs in that endeavor. Secretary Burrell advised that arrangements are in place for the Board and General Meetings in the Fall of 1997 and the Spring of 1998.

Upon motion duly made and seconded, the minutes of the May 1, 1997 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the May 1 Board meeting are published in the Proceedings of the May 1997 General Meeting.

TREASURER'S REPORT

Treasurer Marshall P. Keating of New York reported on the cash on hand and investments as of July 15, 1997, on the Report for the three month period ending on April 30, 1997 and on a summary of the fiscal years 1995, 1996 and 1997, all of which reflected the Association's sound financial condition.

Treasurer Keating also reported on the status of development of an MLA web page, for which a prototype is expected to be available later this year.

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Raymond P. Hayden of New York, reported that the total membership of the Association as of July 18, 1997 was 3,607 members. He presented twenty-two applicants for Associate Lawyer membership.

Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected, bringing the total membership to 3,629.

The list of all the successful candidates for membership 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 John C. Moore of New York, former Vice President of the Association.

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

In connection with the 1997-98 Directory, Membership Secretary Hayden noted that the deadline for corrections had been July 3, 1997, and that the directory was expected to be in the hands of the membership according to the usual schedule.

COMMITTEE ORGANIZATION

President Moseley described his efforts to rationalize our committee structure in order to avoid duplication of effort and more effectively utilize Association resources.

To this end, President Moseley recommended that two Standing Committees—those on Continuing Legal Education and Marine Regulation and Promotion—be eliminated. The Committee on Proctor Admissions would take over the Continuing Legal Education Committee's task of determining whether CLE programs satisfy our proctorship requirements. The Committee on Navigation and Coast Guard Matters, now renamed the Committee on Navigation, Coast Guard and Government Regulations, would include in its scope those matters previously treated by the Committee on Marine Regulation and Promotion.

President Moseley also addressed the ad hoc and special committees, some of which, having been formed originally to deal with a discrete project, had out-lived their intended duration. Some special committees—for example, the Special Committees on Professionalism and on State Certification Programs—should become Study Groups. Other special committees, like the former Special Committee on Government Liaison, should be consolidated into single position Special Appointments.

Board Member Donald C. Greenman of Baltimore, who also chairs the Association's Committee on Limitation of Liability, suggested that another Study Group be appointed to address the issues arising from the 1996 Protocol to 1976 Limitation of Liability for Maritime Claims Convention.

Each of the Study Groups would have a Board Liaison.

Upon motion duly made and seconded, the Board unanimously approved the foregoing changes in committee structure.

All changes to committee structure and leadership will be reflected in the upcoming directory.

REPORT OF THE SPECIAL COMMITTEE ON PLANNING AND ARRANGEMENTS FOR THE 1997 FALL MEETING

Chair Thomas S. Rue of Mobile reported on the Fall meeting, which will take place during the week of October 27, 1997 in Desert Springs, California. The importance of timely registration with the Association and the hotel was stressed.

The seminar, which will be presented on Thursday morning, will address Supreme Court practice, as well as how district courts interpret Supreme Court opinions.

A new feature of the meeting will be a special cocktail party for those who have never before attended an Association gathering at a resort.

The Board will meet on Monday, October 27, and may meet as well on Friday, October 31, before the General Meeting to act on any committee resolutions or recommendations that may arise during the course of the week.

REPORT OF THE SPECIAL COMMITTEE ON THE CENTENNIAL

First Vice President Howard M. McCormack of New York advised that the Association's Centennial meeting in the Spring of 1999 may coincide with a special exhibition by the Second Circuit on the history of that illustrious Court of Appeals.

The Committee will start this summer to examine specific sites in New York for Centennial events. Because of space limitations, it is expected that attendance at Centennial events will be restricted to members and distinguished guests invited by the President.

The Fall 1999 meeting will continue the celebration of the Centennial. It is expected that the Fall meeting will take place at the Hyatt Grand Cypress resort in Orlando, Florida during the week of October 11, 1999.

ASSOCIATION CONTRIBUTION TO THE JOHN R. BROWN COMPETITION

Many MLA members have participated as judges in this valuable moot court competition for law students interested in admiralty and maritime practice. Upon motion duly made and seconded, the Board unanimously resolved to contribute \$2,500 to sponsor next year's competition.

INTERNATIONAL ACTIVITIES

International Maritime Organization

President Moseley reported on the Association's efforts to become more involved in the IMO, which is part of the United Nations and garners government delegations from forty to fifty nations as well as representatives from international organizations such as the Comité Maritime International

and certain carrier groups and P&I clubs. Because the IMO is very active, it is important that the Association have consistent contact with this group. President Moseley has been acting as an advisor to members of the U.S. delegation to the IMO in order to provide both needed advice and continuity. The Coast Guard has asked the Association to provide two advisors for the IMO meeting scheduled to take place in October, and it is anticipated that President Moseley and First Vice President McCormack will attend in this capacity.

Second Vice President Dorsey commented that the IMO Legal Committee will probably be the most fruitful source of new conventions in the foreseeable future.

Don Greenman advised that the Association's Committee on Limitation of Liability has created a new working group to study the ISM code because the code provisions requiring certain management procedures to handle problems and emergencies may eventually affect a shipowner's right to limit. Mr. Greenman told the Board that the IMO home page has valuable articles on the ISM code which will be of use to practitioners addressing legal issues involving almost any aspect of shipside and shoreside management.

Comité Maritime International

First Vice President McCormack reported on the CMI's Centenary meeting, which took place in Antwerp from Sunday, June 8 through Saturday, June 14, 1997. The general subject of the meeting was the future of the CMI, but several substantive topics were also discussed in smaller meetings, each of which was attended by an Association officer together with another Association delegate.

Among those MLA members who attended, there appeared to be a consensus that the CMI will continue to be a tremendous resource for the drafting of international conventions, with the IMO taking a more active role in their passage, as well as for the development of rules for industry use.

A full report of the delegates will be published in the President's Newsletter.

The new leadership of the CMI, including Patrick Griggs as President and Association member Dr. Frank L. Wiswall, Jr. of Castine as one of two vice presidents, promises to enhance the CMI's prestige even more.

DECEASED MEMBERS

President Moseley reported on the resolutions passed to honor our late members, Past President Francis J. O'Brien, Past Vice President John C. Moore and Past Vice President Stanley R. Wright.

COMMITTEE REPORTS

Carriage of Goods

Immediate Past President Hooper reported on the progress of the Association's proposed COGSA revisions, which we hope to have introduced soon. A remaining issue is how much of the Himalaya clause can be taken advantage of by the railroads. President Moseley will send a letter to the Senate, detailing the history of COGSA and the Association's work.

President Moseley, Past President Hooper and Vincent M. DeOrchis of New York, Chair of the Committee on Carriage of Goods, met with the National Industrial Transportation League, which represents most U.S. shippers, and with the National League of Underwriters in order to gain their support for the proposed legislation.

It is expected that the proposed bill would be first introduced in the Senate.

Carrier Security

President Moseley reported that this Committee is attempting to create a fair standard so that local INS officials don't have unbridled discretion with respect to the disposition of stowaways. Stephen H. Vengrow of New York, Chair of the Committee on Carrier Security, has made several trips to Washington, D.C., in order to promote such a standard.

Professionalism

President Moseley reported on the fine efforts of this Study Group, which produced the proposed Code of Professional Conduct presented to the Board and Association in May 1997, and which will be the subject of a vote at the General Meeting in October 1997.

Strategic Planning

President Moseley reported on the progress and work of this Study Group. All proposals will require careful consideration by the Board, but it is anticipated that some recommendations may be implemented sooner than others. Authorities on strategic planning advise that it usually takes about three years to implement a significant plan.

General Average Subcommittee of the Committee on Marine Insurance and General Average

Board Member Raymond L. Massey of St. Louis reported that the Committee received a questionnaire from A.I.D.E., which was referred to the Subcommittee on General Average, about the national law affecting general average and general average in relation to safety at sea. The Subcommittee prepared a clear and concise legal report, and upon motion duly made and seconded, the Board unanimously approved the Subcommittee's report as a Committee response to A.I.D.E.

ABA Relations

James B. Kemp, Jr. of New Orleans, Chair of the Committee on ABA Relations, reported on the role of the Association's delegate at ABA meetings. Mr. Kemp also sought the Board's guidance about a voting policy to govern the actions of the MLA delegate at ABA meetings.

Among the possible policies considered by the Board were that: the MLA delegate should vote his own conscience; the MLA delegate should abstain from voting on all resolutions except those which involve maritime matters and as to those, the delegate should consult with the Association President, who may or may not seek Board approval; or the MLA delegate should seek advance instructions from the MLA President and the Board concerning resolutions which are to be considered by the ABA.

After discussion, and upon motion duly made and seconded, the Board unanimously resolved that on matters affecting maritime issues, the MLA delegate should, if time permits, contact the President, who will consult the Board if he sees fit, and that on other matters, the MLA delegate should vote his conscience.

River and Ocean Towing

F. William Mahley of Houston, Vice Chair of the Committee, reported on the history of river transportation and the Committee's development over the years. He described river towing as the circulatory system of the Midwest.

The Committee used to be called the Western Rivers Committee and took as its first task the job of bringing the inland navigation rules into conformity with the international rules, taking into account the differences between ocean and river transportation. As its scope widened, the Committee was renamed the River and Ocean Towing Committee.

Oil spills and OPA '90 have added to the importance of the Committee's work because the barge system now serves coastal as well as inland

trade. Proposed legislation and regulations are proliferating, especially concerning tank barge manning, structure and other safety issues. There is a strong industry presence in the Midwest to give input to the Coast Guard, and there has been a tremendous amount of cooperation and voluntary action, particularly in connection with inspections. Nonetheless, changes in licensing are being considered.

The Committee has published a newsletter to keep members advised about matters affecting this developing area of law, and the Committee will provide the CLE presentation at the Spring 1998 General Meeting.

Shipping Coordinating Committee

Second Vice President Dorsey reported on the Committee's June 5, 1997 meeting hosted by the Coast Guard which he attended together with Don Greenman of Baltimore. The topic was the IMO's consideration of whether there should be compulsory insurance for all vessels, a topic introduced by delegates from the United Kingdom.

The Shipping Coordinating Committee is seeking comments from government agencies, industry sources and the MLA about whether the United States should adopt the INS Convention.

The issue of whether the Association should recommend adoption of the INS Convention will be brought before the membership at the Spring 1998 meeting. The Convention will affect some U.S. businesses whether or not the United States becomes a signatory.

PRESIDENT'S REPORT

President Moseley reported that a newsletter will go out in summer describing the CMI meeting and the President's activities on behalf of the members, including his attendance at the Average Adjusters' meeting in London and his speech at the recent SEALI meeting.

President Moseley will speak at the Houston Marine Insurance Seminar on September 21 through 23, 1997 and will represent the Association at the October 1997 meeting of the Association of Average Adjusters of the United States. Maintaining our close ties to the Canadian Maritime Law Association, President Moseley will speak on pendent and supplement jurisdiction in November of this year at the Canadian Judicial Conference, which is sponsored by the CMLA.

AMICUS BRIEFS

Two days before this Board meeting, President Moseley was contacted by a clerk of the United States Court of Appeals for the First Circuit, who asked the Association to file an *amicus* brief in the Court's *en banc* rehearing of the panel's decision in *United States v. Rivera*, No. 96-2188 (May 1, 1997) (withdrawn *en banc* May 29, 1997), *aff'g*, 942 F. Supp. 732 (D.P.R. 1996). The case involved the criminal conviction under 46 U.S.C. § 10908 of Pedro Rivera, a dockmaster, for sending the MORRIS J. BERMAN to sea with a deteriorated tow wire. The failure of the tow wire contributed to a spill of the BERMAN'S oil cargo off Puerto Rico. One of the issues presented was whether the prerequisites set forth in other sections of chapter 109 of title 46 must be satisfied before bringing an action under § 10908. The MLA had participated in the recodification of title 46, and had understood from the Coast Guard that no substantive changes of law were intended by the recodification.

After considerable discussion, the Board requested more information before voting on whether to authorize an *amicus* brief in this case.

NEW BUSINESS

First Vice President McCormack reported on the calendar of events of interest to maritime lawyers and asked those with information about such events to bring them to his attention.

There being no further business to come before the Board the meeting was adjourned at 1:00 p.m.

Respectfully submitted,
/s/ Lizabeth L. Burrell
Secretary