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**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
May 2, 1997**

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

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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	James B. Kemp, Jr.
Patrick J. Bonner	Raymond L. Massey
Lawrence J. Bowles	Marion E. McDaniel, Jr.
George D. Gabel, Jr.	Gordon D. Schreck
Donald C. Greenman	Thomas J. Wagner
Neal D. Hobson	Jerome C. Scowcroft

At the invitation of President Moseley, Past President Graydon S. Staring of San Francisco, Charles B. Anderson of New York, Charles D. Brown of New York, Theodore S. Cunningham of New York, John T. Lillis, Jr. of New York, Warren J. Marwedel of Chicago, Ben L. Reynolds of Houston, Winston E. Rice of New Orleans, Thomas S. Rue of Mobile, John P. Vayda of New York and George L. Waddell of San Francisco were also present.

President Moseley advised the Board that there would be a eulogy for Past President Francis J. O'Brien at the General Meeting.

TREASURER'S REPORT

Treasurer Marshall P. Keating of New York reported on the cash on hand and investments as of April 29, 1997 and on the Reports for the years ending on April 30, 1996 and April 30, 1995, all of which reflected the Association's sound financial condition.

Treasurer Keating also reported that Brock, Schechter & Polakoff in Buffalo had developed a proposal for creating a web page for the Association and that the officers had approved the concept, which might be realized later this year.

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

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported on the rewriting of the Purposes section of the Directory and of the responses of the Committee chairs in connection with that task. She also discussed the progress of the efforts being made to centralize our committee membership lists

through our database in Buffalo. Secretary Burrell advised that arrangements are in place for the Board and General Meetings in the spring of 1998.

Upon motion duly made and seconded, the minutes of the March 11, 1997 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the March 11 Board meeting will be published in the Proceedings of the May 1997 General Meeting.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Raymond P. Hayden of New York, reported that the total membership of the Association as of May 1, 1997 was 3,555 members. He presented twenty-five applicants for Associate Lawyer membership and Edward F. Sherman, Dean of Tulane Law School as an applicant for academic membership.

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

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

Darnell Blutworth	Ann-Michele Higgins
Daniel J. Crawford	Jeffrey S. King
Michael J. Devine	Patricia A. Krebs
Stevan C. Dittmann	Michael J. Mitchell
Richard A. Forster	Lauren Motola-Davis
Nancy Harriss	Jeffrey Allan Riggs
John H. Hickey	

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

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

Captain Shaikh Shabbir Ahmed
Stephen H. Busch
David S. French

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

Membership Secretary Hayden advised that the following individuals had been proposed and accepted for Ex-Officio membership at the officers' meeting in January 1997:

Jerry A. Aspland, Rear Admiral,
USMS, President, California
Maritime Academy

Dr. William T. McMullen, Rear
Admiral, USMS, Superintendent,
Texas Maritime Academy

David C. Brown, Rear Admiral,
USMS, President, State University of
New York Maritime College

Dr. Peter Mitchell, Rear Admiral,
USMS, President, Massachusetts
Maritime Academy

Thomas T. Matteson, Rear Admiral,
USMS, Superintendent, U.S.
Merchant Marine Academy

Paul E. Versaw, Rear Admiral,
USCG, Superintendent, U.S. Coast
Guard Academy

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 following members:

Francis J. O'Brien of New York Clifford Alterman of Portland
John Allen Flynn of San Francisco

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

In connection with the 1997-98 Directory, the Membership Secretary noted that there had been several zip code and area code changes and asked the Board and all members to make sure that zip and area codes for their localities are correctly entered in the Directory.

SECOND VICE PRESIDENT'S REPORT

Second Vice President William R. Dorsey of Baltimore reported that from now on, the Committee Chairs' meetings will take place only in conjunction with the May General Meeting.

FIRST VICE PRESIDENT'S REPORT

First Vice President Howard M. McCormack of New York on the Association's use of an event planner to assist the Dinner Committee with the Spring dinner. He also noted that members of the federal and state judiciary

had been invited to attend the dinner and that several were expected to attend, along with honored guests.

INTERNATIONAL ACTIVITIES

Comité Maritime International

Immediate Past President Chester D. Hooper reported on the three meetings in London of the CMI's international subcommittee on the Hague-Visby and Hamburg rules, which he attended with George F. Chandler, III of Houston and Professor Michael F. Sturley of Austin. The discussion included negotiability of bills of lading and EDI.

UNCITRAL has accepted the State Department's suggestion that UNCITRAL issue a draft convention on cargo liability, with the CMI having responsibility for the drafting. After a draft was forged, a diplomatic conference would be held to adopt the convention, which would have the effect of reducing the influence of the Hamburg rules. It is hoped that the new convention would be similar to the Association's COGSA proposal, though at present, other international associations in speaking officially are not willing to advocate an abandonment of the error in navigation defense.

President Moseley reported that contrary to the usual practice of having plenary sessions for the various working groups, the only plenary session of the CMI Centenary meeting will take place on June 13, and will be devoted to consideration of the role of the CMI in the future, a subject on which the CMI had requested the comments of the member organizations. The Canadian Maritime Law Association has suggested many specific changes and improvements, while the Association suggested more general categories of should be the subject of reflection.

Winston E. Rice of New Orleans, the Association's representative to the CMI's discussions of Mobile Offshore Craft, reported on the history of the draft convention on this subject, which was first proposed twenty years ago in Rio de Janeiro. The draft convention did not move forward until the early 1990's, when the IMO's interest in the subject was revitalized. At the CMI's meeting in Sydney in 1994, there was a difference of opinion between the United States and Canadian representatives on the one hand and the other delegates on the other about whether the draft convention adequately treated the subject matter, and the IMO encouraged the CMI to continue to improve upon the existing draft. A working group, eventually given the status of an international subcommittee, was subsequently established of representatives from Canada, Japan and the United Kingdom, later joined by the United States, represented by Mr. Rice, to continue to work to arrive at a

more considered draft. The international subcommittee has continued to meet to revise the draft. Recognizing the need for acceptability to the industry, the CMI has now appointed an industry representative to the international subcommittee in the person of James L. McCulloch of Houston, an Association member who will in addition to Mr. Rice be involved in the CMI panel discussion at the CMI's Centenary meeting, at which the question of what should be included and excluded from the convention will be considered.

Report by the Committee on the CMI

Chair Charles B. Anderson of New York reported on the Committee's preparations for the CMI's upcoming Centenary meeting, which will take place in Antwerp from Sunday, June 8 through Saturday, June 14, 1997. Thirty-four MLA delegates and deputies will attend the meeting. The Association's delegates to that meeting will be: President Moseley; First Vice President McCormack; Second Vice President Dorsey; Treasurer Keating; Robert J. Zapf of Los Angeles (delegate on Attachment and Arrest Convention panel discussions); Professor Michael F. Sturley of Austin and George F. Chandler, III of Houston (delegates on COGSA panel discussions); Winston E. Rice of New Orleans (delegate on Mobile Offshore Craft panel discussions); Harold K. Watson of Houston (delegate on Wreck Removal panel discussions); and Charles B. Anderson, Chair of the Association's Committee on Comit Maritime International.

Five member associations—those of the United States, Canada, Spain, Belgium and Italy—have submitted responses to the CMI's request for suggestions about the future role of the CMI. The suggestions fall into three categories: (1) the role of the CMI, particularly in light of the changes in the international scene that have taken place since World War II, most notably the role of the United Nations in drafting international conventions; (2) work on formulation of model guidelines and laws, especially private laws; and (3) changing the perception that the CMI is too European-oriented and responsive to the interests of P&I clubs by increasing representation of other interests. One of our Association's suggestions was the formation of a long-range planning committee composed of individuals who are not on the Executive Council to explore the function and mission of the CMI in the future. Other suggestions included the adoption of standing committees rather than working groups for certain major topics so as to increase continuity, the inclusion of national associations from Southeast Asia and meetings through electronic means so as to increase the ease and frequency of communications.

As has been done at other meetings, the United States and Canadian delegations will coordinate their efforts and exchange information.

IMO

President Moseley gave the Board a helpful overview of the IMO. It is composed of sixty nations, and is headquartered in London with a full-time staff, governmental delegations, their advisors and observers—certain international organizations such as the CMI and certain carrier groups and P&I clubs—participate in meetings, the general objectives of which are to promote maritime safety and avoid pollution. In the United States, the federal government, through the Coast Guard, will often draft lengthy position papers in advance of meetings, and has often sought the Association's assistance in an advisory role in both the drafting and during the meetings themselves.

President Moseley attended the IMO meeting in April 1997, which dealt in the main with financial responsibility and compulsory insurance. Captain Malcolm J. Williams, Jr. of the Coast Guard expressed gratitude for President Moseley's assistance on the issue of ship guarantees and marine insurance.

HNS Convention

John T. Lillis, Jr., of New York, Chair of the Committee on Transportation of Hazardous Substances, reported that although the Committee favors recommending to the Coast Guard that the United States sign the convention, in view of the many facets to this issue, the Committee will continue to study the convention throughout the coming year in preparation for presenting to the Association at the May 1998 a resolution concerning whether or not to recommend to the Coast Guard that the United States become a signatory to the convention.

LEGISLATIVE UPDATE

Carriage of Goods

Immediate Past President Hooper reported on his most recent visit to Washington with Vincent M. DeOrchis of New York, Chair of the Committee on Carriage of Goods, in order to seek support for the Association's proposed COGSA revisions. Past President Hooper and Mr. DeOrchis met with staff members of the Coast Guard and Maritime Transportation Subcommittee of the House of Representatives Transportation and Infrastructure Committee and with staff members of the Senate Commerce, Science and Transportation Committee. Many of those with whom Past President Hooper and

Mr. DeOrchis met were familiar with the Association's proposal and expressed a great deal of interest in the extent of support from other organizations in the transportation industry. It was suggested that the Association seek the views of the International Association of NVOCC's, the National Customs Brokers & Forwarders Association of America and the Pacific Coast Council of Customs Brokers and Freight Forwarders, in addition to the Association of American Railroads and the ATA, which represents motor carriers.

AMICUS BRIEFS

As a result of a poll taken after the March 11, 1997 Board meeting, the Association filed a brief *amicus curiae* in *S.H.R.M. Catering Services, Inc. v. The Titan 2*, in which suppliers had arrested a crane vessel owned by an instrumentality of a foreign sovereign. The issues presented in this case are described in the Minutes of the March Board meeting.

PRESIDENT'S REPORT

President Moseley reported that Certificates of Appreciation would be presented to retiring Board members and committee chairs.

Plans were discussed for the Board meeting in the summer of 1997 in St. Louis.

President Moseley also noted that many members will be attending the upcoming SEALI meeting.

REPORTS ON COMMITTEE ACTIVITY

President Moseley advised that in order to avoid conflicts in meetings and to carry out more efficiently the work of the Association, there were be some changes in the structure of Association committees, including merging some standing committees, making some committees into subcommittees and using study groups in lieu of ad hoc committees.

Committee on State Certification Programs

Past President Graydon S. Staring, Chair of this Committee, reported that the ABA Committee on Specialization met recently and many representatives from state bar associations, the state judiciaries and private associations like the ATLA Bankruptcy Specialists are very enthusiastic about certification generally. Accordingly, the continuing role of the Committee will be to monitor and report on the positions taken by groups that advocate certification for admiralty practitioners.

Professionalism Committee

Chair Ben L. Reynolds of New Orleans presented the following proposed Code of Professional Conduct:

**MARITIME LAW ASSOCIATION
CODE OF PROFESSIONAL CONDUCT**

1. I will provide the highest level of competency and efficiency in the performance of all legal services.
2. I will comply with all rules of codes of professional conduct, and respect the law and preserve the decorum and integrity of the judicial process.
3. I will be civil and courteous to all colleagues, parties, witnesses and the courts, recognizing that effective representation is undermined by antagonistic behavior.
4. I will keep my word in the conduct of my legal practice and treat my colleagues, parties, witnesses and the courts with respect and dignity.
5. I will maintain the trust of my clients by keeping them well-informed and actively involved in making decisions affecting them.
6. I will resolve all disputes expeditiously and not engage in any course of conduct which unnecessarily increases cost or delays litigation.
7. I will engage in the discovery process seeking an expeditious result for my client's legitimate interest, while avoiding the abuse and harassment of witnesses and parties.
8. I will contribute time and resources to *pro bono* activities.
9. I will not mislead or make any misrepresentation to the court.
10. I will exemplify and instill in others the tenets of this Code of Professional Conduct.

Mr. Reynolds expressed thanks to the judicial members of the Committee for their valuable contributions, as well as to the Committee as a whole for its hard work and serious treatment of all issues. Upon motion duly made and seconded, the Board unanimously endorsed the principles set forth in the proposed code, and resolved to submit the Code to the membership as

a whole at the Fall General Meeting because of the significance of this matter.

Ad Hoc Joint Subcommittee on OPA 90 Concursus

This Subcommittee, which is part of the Committees on Marine Ecology, Marine Financing and Practice and Procedure, presented proposed Board resolution through the Chair of the Committee on Marine Ecology, John P. Vayda of New York. The proposed resolution is designed to ease the difficulties encountered in multiple arrest situations, is as follows:

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 (22 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).

The proposed resolution had been approved by the Committees on Marine Ecology and Marine Financing, as well as the Subcommittee on Federal Rules and Statutes, but because the meeting of the Committee on Practice and Procedure would follow the Board meeting, it was decided to vote on the proposed resolution after that Standing Committee had had an opportunity to review and approve the proposed resolution before the Board voted.

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, and distributed a flyer about the facilities.

Marine Financing Committee

Charles D. Brown of New York, Chair of the Marine Financing Committee, presented proposed Board resolutions to ameliorate problems with the Vessel Identification System, to coordinate with the Coast Guard in connection with the National Vessel Documentation Center and to clarify priorities and integrate the Coast Guard's work with the VIS. Upon motion duly made and seconded, the following resolutions were unanimously passed:

RESOLVED, that the Association support review of the legislation creating the Vessel Identification System to correct technical deficiencies such as the need to eliminate the words "or is not titled in a State" from 46 U.S.C. § 12102(a) and to clarify and improve that legislation in accordance with the concepts reflected in the attached draft of amendments, attached to this resolution, and the Chair of the Committee on Marine Financing, or his designee, is authorized to address technical deficiencies and clarifications and improvements to that legislation with congressional staff and others.

RESOLVED, that the Association supports the efforts of the Coast Guard to implement the Vessel Identification System to promote recreational vessel financing and urges the Coast Guard to coordinate the various branches within the Coast Guard working on related aspects of recreational vessel financing, namely the Notice of Proposed Rulemaking on Expanded Hull Identification Number and New Requirements for Certificates of Origin (May 6, 1994), the Guidelines for State Boat Titling Systems (February 23, 1996), the rulemaking which will be needed in order that the National Vessel Documentation Center may be coordinated with and integrated into the Vessel Identification System, and any other

related rulemaking, including matters set forth in a letter dated April 18, 1997 addressed to Admiral Kramek by the Chair of this Committee.

Draft of Amendments: Legislative Initiatives-Vessel Identification System

(A) Section 12102 of Title 46, United States Code, is amended by deleting from subsection (a) thereof the words "or is not titled in a State".

(B) Section 12301 of Title 46, United States Code, is amended by adding at the end thereof the following:

(c) A documented vessel shall not be titled or required to display numbers under this chapter by a State and any certificate of titled issued for a documented vessel must be surrendered as provided by regulations prescribed by the Secretary.

(d) The Secretary may approve the surrender of a certificate of title covered by a preferred mortgage under section 31322(d) only if the mortgagee consents.

(C) Subsection (b) of section 3122 of Title 46, United States Code, is amended by striking it and inserting in lieu thereof the following:

(b) Any indebtedness secured by a preferred mortgage filed or recorded under this chapter or deemed to be preferred under subsection (d) of this section may have any rate of interest to which the parties agree.

(D) Subsection (d)(3) of section 31322 of Title 46, United States Code, is amended by striking it and inserting in lieu thereof the following:

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage or instrument granting a security interest became a preferred mortgage under this subsection.

(E) Section 31325 of Title 46, United States Code, is amended as follows:

- (1) At subsection (b)(1), by inserting immediately after the words "a vessel to be documented under chapter 121 of this title," the following: "a vessel titled in a State,"; and
- (2) At subsection (b)(3), by inserting immediately after the words "a vessel for which an application for documentation is filed under chapter 121 of this title," the following: "a vessel titled in a State,"; and
- (3) At subsection (c), by inserting immediately after the words "a vessel to be documented under chapter 121 of this title," the following: "a vessel titled in a State,".

Strategic Planning Committee

Chair George L. Waddell of San Francisco presented the Board with an written Interim Report.

There being no further business to come before the Board the meeting was adjourned at 12:00 p.m.

Respectfully submitted,
/s/ Lizabeth L. Burrell
Secretary