

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

**Held at the  
Marriott Desert Springs Resort in Palm Desert, California  
on  
October 27 and 31, 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:

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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	Raymond L. Massey
Patrick J. Bonner	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

At the invitation of President Moseley, Lieutenant Commander Bruce P. Dalcher, U.S.C.G., of Washington, D.C., Vincent M. De Orchis of New York, Chair of the Committee on Carriage of Goods, Robert J. Zapf of Los Angeles, Chair of the Committee on Practice and Procedure, and Thomas S. Rue of Mobile, Chair of the Special Committee on Planning and Arrangements for the 1997 Fall Meeting, were also present at the October 27, 1997 meeting.

#### **SECRETARY'S REPORT**

The Proceedings of the Spring 1997 meeting were sent out to the membership, and included the minutes of the March and May 1997 Board meetings as approved and adopted by the Board.

Secretary Burrell reported that arrangements have been made with the Association of the Bar of the City of New York for the Association's general meetings on May 1, 1998, November 6, 1998 and May 7, 1999, and for the Board meetings in New York.

Upon motion duly made and seconded, the minutes of the July 19, 1997 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the July 19, 1997 Board meeting will be published in the Proceedings of the Fall 1997 General Meeting.

#### **TREASURER'S REPORT**

Treasurer Marshall P. Keating of New York reported on the cash on hand and investments as of September 30, 1997, the results of the May 1997

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dinner and on the Report for the three month period ending on July 31, 1997, all of which reflected the Association's sound financial condition.

Treasurer Keating reported on our generally successful experience with the party planner who assisted with the May 1997 dinner.

Treasurer Keating also reported on the status an MLA web page, which is soon expected to be up and running.

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 Directory has been distributed to the membership and asked that any errors be corrected by forwarding accurate information to our data processor in Buffalo using the blue card in the front of the Directory.

At the October 27 Board meeting, Membership Secretary Hayden presented thirty-three applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

In addition, at the October 27 Board meeting, Membership Secretary Hayden reported that four applicants had been recommended for Non-Lawyer membership. Those recommendations are:

George H. Boothby  
John A. Chamberlain  
Pieter L.M. Vismans  
Dr. Chao Wu

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

At the October 31 Board meeting, Membership Secretary Hayden reported that the Proctor Admissions Committee had recommended that seventeen Associate Lawyer members be advanced to Proctor status. They are:

Gregory G. Barnett	Steven Levi
James M. Beard	Michael J. McHale
Michael M. Butterworth	Daniel P. McKiernan
Michael J. Eisele	John A. O'Donnell
James E. Forde	Salvador J. Pusateri
Frederick B. Goldsmith	Michael F. Shanahan
David I. Hilleren	Russell R. Williams
Paul A. Kettunen	Mary A. Wilson
Robert E. Kiely	

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

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

Brendan O'Sullivan of Tampa  
Sam V. Tranchina of Manhasset  
Past Vice President John C. Moore of Bloomfield

As of October 26, 1997, the total membership of the Association was 3,592 members. As of October 31, 1997, after the changes in membership approved by the Board during their October 27 and 31, 1997 meetings, the total membership was 3,632.

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

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

## **COMMITTEE REPORTS**

### **Carriage of Goods**

Immediate Past President Hooper and Vincent M. De Orchis of New York, Chair of the Committee on Carriage of Goods, reported on the progress of the Association's proposed COGSA revisions. The proposed legislation has encountered obstacles not because it is controversial but because it requires knowledge of the technical aspects of this area of law and does not have wide-spread appeal to voters and thus is not a priority issue with legislators. The Association has been working with counsel to the Senate, Carl Santucci (Democrat) and Carl Benzel (Republican). President Moseley,

Immediate Past President Hooper and Mr. De Orchis have made four trips to Washington, D.C. to discuss the proposed legislation.

The Association has been told that the legislation will probably be attached to other legislation, such as the Coast Guard Authorization Act. The earliest that the bill would come up for consideration in the Senate would be in February 1998, with a vote in the Spring of 1998.

President Moseley and Immediate Past President Hooper reported that the problems with the railroads would probably be ironed out. It was pointed out that the lengthy report and analysis in MLA Document No. 724 concerning the proposed legislation will be distributed to those considering the legislation.

### **Practice and Procedure**

Chair Robert J. Zapf of Los Angeles reported on his success in persuading the Advisory Committee to the Judicial Conference to adopt the Association's recommendations in amending Rules B and C. After initial changes were approved, the Advisory Committee turned its attention to so-called "stylistic" changes, which would have produced, however, some significant changes to admiralty practice, two of which would have been particularly troublesome in maritime litigation.

One of the areas of disagreement between the Association and the Advisory Committee dealt with the identity of parties entitled to defend seized property, which was being amended in part because of confusion about the term "claimant" that had come to exist in civil forfeiture proceedings. The Association wanted to provide for a broad definition of interests that would entitle a party to come in and claim the seized property, especially in recognition of the fact that many foreign jurisdictions recognize interests other than legal title as giving standing to claim seized property. The Advisory Committee's reporter had taken the position that "any ownership interest" would cover legal, beneficial and equitable ownership. In order to leave no doubt about who could claim seized property, the Association's suggestion was that a "claimant" be defined as anyone who asserts a "legal or equitable ownership interest" in the seized property. A compromise was reached that the notes accompanying the rules would explain the breadth of the intended interests.

The second area of disagreement between the Association and the Advisory Committee concerned the provisions of Rule B that permit the use of state court attachment procedures when a Rule B attachment is not permitted because the defendant can be found within the district. Rule B permits state law attachments "pursuant to [old]Rule 4(e)," which had pro-

vided for service upon a party not found within the state. Rule 4(e), however, has been amended and its current version has been renumbered as Rule 4(n). The reporter's suggestion had been merely to substitute a reference to Rule 4(n) for the reference to Rule 4(e), but the effect would not have been the same as the practice under Rule B because Rule 4(n) provides for state court attachments only if the defendant cannot be served under any other provision of Rule 4, and Rule 4 now contains many expanded, long-arm and substituted service methods. Accordingly, the availability of state law attachments would therefore have been restricted if a reference to Rule 4(n) had merely been substituted for the reference to Rule 4(e). The solution ultimately reached was to substitute a reference to Rule 64, which permits the use of state court attachment provisions in federal proceedings, instead of Rule 4(n).

The next step to be taken by the Advisory Committee is the circulation of the draft rules, but the amended rules are not likely to be finalized in the near future.

#### **Special Committee on Planning and Arrangements for the 1997 Fall Meeting**

Chair Thomas S. Rue of Mobile reported on registrations for the ongoing meeting, which were anticipated to be about the same as that for 1995 Fall meeting in Hawaii. Mr. Rue urged the Board members and their spouses to attend the welcoming reception for registrants who had not previously attended a resort meeting of the Association. Mr. Rue was optimistic that the new, specially coordinated program for members' children would be successful.

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

#### **Special Committee on the Centennial**

Treasurer Keating reported on the activities of the Committee on the Centennial and advised that at least one of the events would take place at the Museum of Modern Art and another at the Boathouse in Central Park. The Committee also hopes to hold an event at Gracie Mansion, if feasible.

The Federal Bar Association, together with the Second Circuit and the Southern District of New York, is planning an exhibition at the Southern District's new courthouse, and members will be able to attend an event there as well.

Treasurer Keating and First Vice President McCormack reported on the extensive efforts of the Centennial Committee members to find locations that were both interesting and affordable. Unlike our usual registration format, it is anticipated that registrants for the Centennial meeting will sign up for the events that they particularly want to attend and will pay a registration fee according to which events they have selected.

#### **Study Group on Professionalism**

President Moseley advised that because the Study Group's Chair, Ben L. Reynolds of New Orleans, and Vice Chair, John D. Kimball of New York, were prevented by professional obligations from attending this meeting, Second Vice President Dorsey will present the Study Group's proposed Code of Professional Conduct to the membership for a vote at the General Meeting on October 31, 1997. President Moseley expressed gratitude to the many judicial members who contributed so much to the drafting of the proposed code. It was suggested that if the proposed code is adopted, that it be sent to judges handling admiralty and maritime cases to show the Association's commitment to maintaining its standards of excellence.

#### **ASSOCIATION CONTRIBUTION TO THE JOHN R. BROWN COMPETITION**

President Moseley reported that the Association had made a \$2,500 contribution to next year's competition and that the funds will be used to award a "best brief" prize. Board members invited to participate as judges were encouraged to accept this task.

#### **FUTURE MEETINGS OF THE BOARD OF DIRECTORS**

Board member Gordon D. Schreck reported that the next meeting of the Board of Directors will take place on March 4 and 5, 1998 in Charleston, South Carolina.

President Moseley reported that there will be an officers' meeting in January or February 1998 and reminded Board members of future meetings on April 30 and November 5, 1998.

## **INTERNATIONAL ACTIVITIES**

### **International Maritime Organization**

President Moseley introduced Lieutenant Commander Bruce P. Dalcher, who is the Coast Guard liaison to the Association and has been an active member for several years. Together with USCG Rear Admiral Paul M. Blayney, Chief Counsel, and USCG Captain Malcolm J. Williams, Jr., Chief of the Office of Maritime and International Law, Commander Dalcher contributes to the successful operation of the Coast Guard's the International Department. The Association is grateful for the cooperation and assistance offered by the Coast Guard and coordinated by Commander Dalcher.

Commander Dalcher reported on the 76th Session of the IMO Legal Committee, which had met on October 13 through 17, 1997 in London. Commander Dalcher thanked President Moseley and First Vice President McCormack for their attendance and assistance at the session, as well as all the members who have assisted in the U.S. delegation's preparations for IMO meetings.

IMO Secretary General O'Neil began the meeting with an exhortation to the delegates to increase the effort devoted to implementing existing conventions rather than developing new ones, and many delegations seemed to be responsive to this request, resulting in more focus on implementation of the Convention on Hazardous and Noxious Substances.

Increased attention to the HNS Convention, however, did draw some attention away from other drafting projects, such as proposed conventions as that for provision of financial security, which began a few years ago as compulsory insurance, compensation and liability for bunkers, and wreck removal. The financial security issue has been effectively split in two: the first issue, which is being given a higher priority, is security for passenger claims, which will proceed within a correspondence group under the framework of the 1974 Athens Convention as modified; and the second issue is general financial security for third party claims, *i.e.*, a common, minimal core of P&I coverage for all vessels.

First Vice President McCormack was of great assistance in the deliberations on wreck removal, which will also be the subject of continued discussion in a correspondence group between sessions.

Commander Dalcher said the Coast Guard would continue to rely on the Association to assist in developing and urging the U.S. position on issues before the IMO. The next meeting of the IMO Legal Committee will be April 24, 1998.



### **Comité Maritime International**

First Vice President McCormack reported that President Moseley and CMI President Patrick Griggs had had a long and productive meeting about the future of the CMI.

José M. Alcantara, President of the Spanish Maritime Law Association, Karl J. Gombrii, President of the Swedish Maritime Law Association, Patrick Griggs, President of the CMI, Barry Oland, Vice President of the Canadian Maritime Law Association, Allan Philip, immediate Past President of the CMI, Jean-Serge Rohart, President of the French Maritime Law Association, and Alexander von Ziegler, Secretary General of the CMI, all were attending the Association's meeting and planned to attend the Association's CMI Committee meeting.

President Moseley reported that the CMI will need a contribution from the Association to continue the CMI's work, and at the motion of Board member Marion E. McDaniel, Jr., which was duly seconded and unanimously passed, it was RESOLVED that the Association's President is authorized to make an appropriate contribution.

### **Shipping Coordinating Committee**

Board member Donald C. Greenman reported on the last meeting of the Shipping Coordinating Committee, which affords a forum for discussion with the Coast Guard of items on the agendas for impending IMO Legal Committee meetings as well as an opportunity to hear about what transpired at the last IMO Committee meeting. Many of the documents distributed at the Shipping Coordinating Committee meetings, such as a paper by P&I clubs about their position on financial security, are of considerable value to those involved in the maritime field.

### **PRESIDENT'S REPORT**

President Moseley reported that a newsletter will go out in November. President Moseley described his other activities on behalf of the Association, including his speech on recent developments in maritime law at the Houston Marine Insurance Seminar on September 21 through 23, 1997. President Moseley also attended the most recent meeting of the Average Adjusters Association of the United States and the MICA claims dinner.

President Moseley will also speak at the Canadian Judiciary Conference in Ottawa on the subject of pendent (now supplemental) jurisdiction and will attend a meeting in New York of the American Institute of Marine Underwriters.

## AMICUS BRIEFS

At the request of the United States Court of Appeals for the First Circuit, and with the approval of the Board taken by poll after the July 19, 1997 Board meeting, the Association filed an *amicus* brief authored by Board member Patrick J. Bonner of New York and assisted by Robert B. Parrish of Jacksonville, Chair of the Committee on Navigation, Coast Guard and Government Regulations, 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. Thomas J. Muzyka of Boston attended the oral argument and issued a written report to the Board about the course of the argument.

The Board also discussed the Eleventh Circuit's opinion in *In re Amtrak "Sunset Limited" Train Crash*, 121 F.3d 1421 (11th Cir. 1997), which was authored by one of our seminar speakers, The Honorable Alex Howard, United States Senior District Judge sitting by designation. In that case, the court held that federal maritime law, not Alabama state law, governed wrongful death claims arising from a train derailment resulting from a bridge support having been damaged by a barge. The time for petitioning for certiorari had not yet expired at the time of the Board meeting. President Moseley expressed the Association's appreciation of Judge Howard's attendance as a speaker at our seminar.

## NEW BUSINESS

Board member Jerome C. Scowcroft discussed the International Tug of Opportunity System, which is mandated under federal law and intended to allow for emergency response to vessels in distress through a central computer system developed through industry initiatives. Transponders which show location are being placed on tugs that have enrolled in the system so that an agency, such as the Seattle Marine Exchange, with a computer linked to the central database and equipped with navigational charts and information about each enrolled tug, can locate a tug that may be able to respond to an emergency. Vessel owners who are linked to this system can

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actually observe on their computers, in real time, the progress of their vessels, and members of certain organizations and exchanges may be able to gain access to this system through the Internet. Mr. Scowcroft will gather available materials on this system and forward them to the President so that a brief discussion of this development can be included in the President's Newsletter.

Board member Donald C. Greenman advised that the Coast Guard has published a questionnaire in the Federal Register seeking public commentary about whether the federal government should license recreational boaters. The Association has adopted a model law for states that wish to license recreational boaters.

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