

[11296]

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

**Held at the  
Charleston Place Hotel in Charleston, South Carolina  
on  
March 6, 1998**

The meeting was called to order by President James F. Moseley at 8:55 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  
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, John T. Lillis, Jr. of New York, Chair of the Committee on Transportation of Hazardous Substances, and Past Presidents Richard W. Palmer, Gordon W. Paulsen and Graydon S. Staring were also present at the meeting.

President Moseley commenced the meeting by thanking Board member Gordon D. Schreck for his efforts in making arrangements for the meeting.

**SECRETARY'S REPORT**

Secretary Lizabeth L. Burrell of New York reported on the status of the announcement of the Spring 1998 meeting and dinner, including the schedule of Committee meetings and information regarding the CLE program and Forum of Maritime Law Teachers on Friday, May 1, and events and activities in New York during the time of the meeting.

The Proceedings of the Fall 1997 meeting were sent out to the membership, and included the minutes of the July 19, 1997 and October 27 and 31, 1997 Board meetings. Additional copies of the Proceedings were distributed to the Board.

Secretary Burrell also advised the Board of changes in our data processing services, which had been handled through an accounting company in Buffalo. Such services will be provided by PC Solutions, also in Buffalo, commencing in April 1998.

Upon motion duly made and seconded, the minutes of the October 27 and 31, 1997 meetings of the Board of Directors and the Secretary's report were unanimously approved and accepted.

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

Because Treasurer Marshall P. Keating was unable to attend, Secretary Burrell reported on the cash on hand and investments as of March 1, 1998, a comparison of this position with that on March 7, 1997, the results of the Fall 1997 meeting in Palm Desert and on the Reports for the three month periods ending on October 31, 1997 and January 31, 1998, respectively, all of which reflected the Association's sound financial condition.

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 on the schedule of committee meetings during the May meeting, and on efforts to organize and standardize the schedule of committee meetings to minimize conflicts among committees with large attendance and allow members to attend more meetings.

Mr. Hayden presented twenty-eight applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

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

Thomas A. Brown of Houston	Past Membership Secretary
Eli Ellis of New York	Richard E. Repetto of New York

As of March 5, 1998, the total membership of the Association was 3,525 members. After the addition of the new Associate Lawyer members, which was approved by the Board during the March 6, 1998 meeting, the total membership is 3,563.

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.

## **RESOLUTIONS**

President Moseley sought, and upon motion duly made and seconded, the Board gave authorization for resolutions honoring the contributions of deceased officers and members of the Association's Board, and approved a resolution in appreciation of the achievements of former Membership Secretary Richard E. Repetto of New York.

Upon motion duly made and seconded, the Board also unanimously passed Resolutions recognizing the accomplishments of American Maritime Cases and its editors, and the Canadian Maritime Law Association.

## **OFFICERS' MEETING IN FEBRUARY 1998**

President Moseley reported on the Officers' Meeting in Washington, D.C., on February 6, 1998 at the Army and Navy Club. The officers were joined by members of the Navy and Coast Guard for part of the meeting. Discussions included the status of the Association's COGSA proposal, the Association's Professionalism Code, plans for the Spring meeting and committee activities.

## **MLA PROPOSED LEGISLATION ON CARRIAGE OF GOODS**

President Moseley and Immediate Past President Hooper were glad to report that there will be hearings on the Association's proposed COGSA revisions this Spring. It now appears that the proposed COGSA will not be attached to other legislation. A law review article by Professor Michael Sturley of Austin and the Association's documents accompanying the original Committee recommendation will be presented in the package of materials to legislators considering the bill, and will be included as part of the legislative history.

Professor Sturley has prepared a redline comparison of the Association's original proposal and the second rewrite of Lloyd G. Ator, the Senate legislative drafter who was assigned to make the language of the Association's proposal conform to the structure and wording now favored by the Senate. The Senate rewrite does not differ in substance from the Association's proposal.

The Association's comments on the Senate rewrite will be prepared and reviewed in Washington in March.

A copy of the report by Vincent M. De Orchis of New York, Chair of the Committee on Carriage of Goods, will be appended to the original of these minutes.

At this time, it appears that the only industry group with continuing apprehensions about the effect of the proposed legislation is American Waterways Operators, who favor retention of the error in navigation defense. In discussions with AWO, Past President Hooper explained that since towage contracts are not covered by COGSA, AWO members could continue to incorporate by reference the unamended 1936 COGSA in towage contracts, thus permitting the 1936 Act's defenses, including error in navigation, to continue to be applied in cases arising from such contracts.

The proposed legislation will be further refined before the hearings. Upon motion duly made and seconded, the Board RESOLVED that the Association's representatives and special study group members, including Mr. De Orchis, Professor Sturley, Past President Hooper, Marilyn Lytle, George Chandler and William Augello, are authorized to administer and implement the objectives of the May 1996 proposed COGSA legislation in commenting on and supporting the Senate's revisions.

## **COMMITTEE AND STUDY GROUP ACTIVITIES**

### **Practice and Procedure**

President Moseley reported that the Committee on Practice and Procedure has unanimously approved a new set of local model admiralty rules, which were distributed to the Board for review and comment. The proposed rules have been sent to committees in some judicial districts which are in the process of revising their local rules. These committees have been advised that although the Association's Committee on Practice and Procedure has unanimously approved the proposed model rules, the Board has not yet reviewed and approved them.

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

First Vice President Howard M. McCormack of New York reported on the arrangements for the Association's Centennial meeting in the Spring of 1999 in New York. Members will be charged only for those events for which they register. On Tuesday, May 4, members will be able to attend an exhibition at the new courthouse for the United States District Court for the Southern District of New York, which is also being sponsored by the Ocean Liner Museum, the Federal Bar Council and the United States Court of Appeals for the Second Circuit. The Centennial meeting's main dinner event will be a black tie buffet at the Museum of Modern Art on Wednesday, May 5. Members may review exhibits at their leisure. Guides will be available.

On Thursday night, May 6, there will be a cocktail reception at the Boat-house in Central Park, which will accommodate 400 to 500 people. Arrangements for the evening of Friday, May 7, are still being negotiated.

CMI President Patrick Griggs has advised that he plans to hold meetings in New York of the CMI Executive Council and Assembly late in the week of the Association's Centennial meeting. Those attending the CMI meetings may be invited to participate in some of the Association's activities in celebration of its centennial.

### **Study Group on Long Range Planning**

The report of the Long Range Planning group was submitted to the Board for review and comment. President Moseley praised the efforts of the Chairman, George L. Waddell of San Francisco, as well as all Study Group members, who represented a cross-section of the entire membership.

President Moseley asked Board members to send them their comments by April 15, 1998. The objective is to analyze and reflect on the suggestions of the Study Group, with an eye to their practicability and considering if, how and when to implement the various suggestions.

### **Study Group on State Certification Procedures**

Past President Graydon S. Staring reported on the current status of state certification initiatives among state legislatures and in the American Bar Association, as well as on the efforts of this Study Group and its future role within the Association.

This Study Group (at first a Special Committee) was formed in 1994 in response to Florida's imminent imposition of certification requirements. The objective was to discourage that State from mandating certification, but unfortunately, we entered the field too late to have a significant impact on the State decision-makers.

In recent years, neither the States nor the ABA has vigorously promoted state certification. The subject, however, is bound to resurface, especially because there are many groups outside the maritime bar dedicated to the promotion of certification who think that our area of practice is obviously and naturally an area for state certification.

There has been no consensus within the Study Group about preliminary questions or fundamental hypotheses to be explored. Past President Staring therefore suggested that the Study Group be given a very specific mission.

President Moseley, Second Vice President Dorsey and other Board members commended Past President Staring's writings on the subject of

state certification, the most recent of which is *The Proctor's Dilemma: Certifying Specialties in Admiralty*, 28 J. MAR. L. & COM. 503 (1997).

#### **Study Group on the ISM**

President Moseley noted that Antonio J. Rodriguez of New Orleans, Chair of the Study Group on the International Safety Management Code, will provide a report for the next Board meeting.

#### **Study Group on the Marine Insurance Act**

President Moseley reported on the activities of this Study Group, chaired by Edward V. Cattell, Jr., of Philadelphia. There is an exciting possibility, inspired by Professor Sturley's law review article, that the American Law Institute may take up the project of drafting a Restatement of Marine Insurance in the near future. Such a project may have more of a chance of overcoming the difficulties created by *Wilburn Boat* than other alternatives that have been considered previously by the Association. If the ALI decides to work on such a Restatement, the Board will have to consider the role of the Association in assisting in this endeavor.

### **INTERNATIONAL ACTIVITIES**

#### **International Maritime Organization**

President Moseley advised that he and Second Vice President Dorsey will attend the April 1998 meeting of the IMO as advisors to the eight-member U.S. delegation. The subjects to be discussed will include bunker pollution and the Athens Convention 1974.

#### **IMO Convention on Hazardous and Noxious Substances**

John T. Lillis, Jr. of New York, Chair of the Committee on Transportation of Hazardous Substances, gave an overview of the Convention on Hazardous and Noxious Substances, which was promulgated by the IMO in May 1996 as a compromise document. Many industry groups were not enthusiastic about the result of the negotiations.

A majority of the Association's Committee on Transportation of Hazardous Substances has found merit in certain technical aspects of the Convention, but the effects of some of the Convention's provisions are still unclear. For example, one of its terms would allow a direct action for first tier liability against a liability insurer which has issued a certificate of financial responsibility for the benefit of a vessel operator. Second tier liability would fall upon the fund. An open question is what would happen if there is a short-fall after exhausting the fund, and whether that risk is insurable:

Because of the dense population on the continent, the extent of river transport, significant environmental concerns and the resulting anxiety about the possibility and effects of a spill of a toxic substance, European nations have been strong proponents of the Convention. Thus, the Convention has been ratified by the United Kingdom, France, Germany and a number of other European countries. Ships registered in countries which have ratified the Convention must carry a certificate of insurance as required by the Convention.

In terms of the Association's goals and interests, the most appealing aspect of the HNS Convention would be its encouragement of uniformity through its preemption provision, which could affect conflicting provisions of CERCLA, OPA '90 and state statutes, although the Convention is not clear on this issue. U.S. ratification of the Convention would probably require enabling legislation as a result of this potential conflict between the Convention and existing domestic legislation.

Industry constituents are either neutral or negative about the Convention.

Because of the lack of a warm reception by many sectors of the maritime industry, the lack of clarity in several provisions and the potential conflict with domestic law, Mr. Lillis recommended that the Association defer taking any position on U.S. ratification of the Convention while maintaining close contact with the Coast Guard and industry representatives until such time as the Convention is taken up by the government. If and when the government takes up the Convention for consideration, the Association can serve as a source of unbiased legal advice on issues raised by the Convention. In the meantime, the Association's Committee on Transportation of Hazardous Substances will undertake an effort to inform and educate members about the Convention.

Upon motion duly made and seconded, the Board unanimously voted to continue to monitor developments in the United States in considering the HNS Convention while the Committee maintains contact with the Coast Guard and IMO delegations.

#### **SPRING 1998 MEETING**

First Vice President Howard M. McCormack reported that the announcement of the May 1998 meeting is at the printers. The price to attend the upcoming Spring dinner will be the same for members and nonmembers.

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**PRESIDENT'S REPORT**

President Moseley represented the Association at the annual dinner of the American Institute of Marine Underwriters. President Moseley also spoke in Ottawa on November 27 and 28, 1997 at the Canadian Judiciary Conference on the subject of supplemental jurisdiction.

President Moseley thanked the Board members who acted as brief judges in the Judge John R. Brown Moot Court Competition and indicated that the Association's prize for the best brief had been very gratefully received.

There being no further business to come before the Board the meeting was adjourned at 11:50 a.m.

Respectfully submitted,  
/s/ Lizabeth L. Burrell  
Secretary