

[11536]

**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, New York, New York  
on  
November 5, 1998**

The meeting was called to order by President Howard M. McCormack at 9:30 a.m. In addition to President McCormack, the following officers were present:

William R. Dorsey, III, First Vice President  
Raymond P. Hayden, Second Vice President  
Lizabeth L. Burrell, Secretary  
Patrick J. Bonner, Treasurer  
Winston Edward Rice, Membership Secretary  
James F. Moseley, Immediate Past President

The following Board members were present: the following Board members were present:

James W. Bartlett, III	George J. Koelzer
Denise S. Blocker	Alfred J. Kuffler
Lawrence J. Bowles	Marion E. McDaniel, Jr.
Bruce A. King	Gordon D. Schreck
Jean A. Knudsen	Thomas J. Wagner

At the invitation of President McCormack, James K. Carroll of New Orleans, Chair of the Special Committee on Planning and Arrangements for the 1999 Fall Meeting, Theodore S. Cunningham of New York, Chair of the Special Committee on the Centennial, Vincent M. DeOrchis of New York, Chair of the Committee on Carriage of Goods, William T. Storz of Alexandria, Vice Chair of the Committee on Salvage, Professor Michael F. Sturley of Austin, a member of the Study Group on ALI Restatement of Marine Insurance, M. Hamilton Whitman, Jr., of Baltimore, Chair of the Committee on Planning and Arrangements for the 2001 Fall Meeting, and Robert J. Zapf of Los Angeles, Chair of the Committee on Practice and Procedure, were also present at the meeting.

**SECRETARY'S REPORT**

Secretary Lizabeth L. Burrell of New York reported that there is an effort being made to coordinate the committee membership lists maintained by the Committee Chairs and those maintained by the Association.

Secretary Burrell also confirmed that arrangements have been made with the Association of the Bar of the City of New York for the Associa-

tion's general meetings through November 2000, and for the related Board meetings in New York.

Upon motion duly made and seconded, the minutes of the August 21, 1998 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the August 21, 1998 Board meeting will be published in the Proceedings of the Fall 1998 General Meeting.

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

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on July 31, 1998 and reported on the cash on hand and investments as of October 31, 1998, both of which reflected the Association's sound financial condition. A comparison of our cash positions over the past two years showed that we are in about the same position.

Treasurer Bonner also reported on a change in the Association's insurance arrangements which will result in lower premiums.

The Treasurer proposed a banking resolution in connection with the Fall 1999 meeting in Orlando authorizing the opening of accounts at First Union Bank in Florida and Republic National Bank to fund the necessary advance expenditures for this meeting. Upon motion duly made and seconded, the Board unanimously approved the resolutions, copies of which are appended to original of these minutes.

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

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

Membership Secretary Winston Edward Rice of New Orleans presented twenty-four applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

The Membership Secretary reported that five applicants had been recommended for Non-Lawyer membership. Those recommendations are:

John E. Campbell  
Edward Dangler  
Joseph E.M. Hughes  
Kevin J. Kearney  
James T. Nasso

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

Upon motions duly made and seconded, Professor Ed Cooper of the University of Michigan was proposed and approved as a new Academic member, and Assistant Attorney General Frank Hunger, United States Department of Justice, Civil Division, was proposed and approved as a new Ex Officio member.

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

David P. Buehler

P.J. Murphey Harmon

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

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

Woodrow DeCastro of  
Panama

Harold J. Rhodes of  
Morgan City

Michael E. Hanrahan of  
Jacksonville

Benjamin F. Stahl, Jr., of  
Philadelphia

As of November 4, 1998, the Association had 3,557 members. As of November 5, 1998, after the changes approved by the Board at its meeting, the total membership was 3,590.

The Membership Secretary also reported on the efforts that had been undertaken to make the Directory as accurate as possible and the need for members to report any changes in their communications information, including area codes, to our data processing facility in Buffalo. Membership Secretary Rice advised that the Association is in the process of converting its database to Windows-based software to make membership information more reliable and accessible and to allow publication of e-mail addresses.

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. Rice's written report are appended to the original of these minutes.

## **SECOND VICE PRESIDENT'S REPORT**

Second Vice President Raymond P. Hayden of New York reported on the November 3, 1998 meeting of new Committee Chairs and the booklet containing brief reports on Committee activities from all Committee Chairs.

There will be a meeting of all Committee Chairs in conjunction with the General Meeting in the Spring of 1999.

Second Vice President Hayden also reported on the changes in scheduling Committee meetings so as to allow members to plan their activities more efficiently and to attend more meetings. Further efforts will be undertaken to try to avoid the simultaneous scheduling of meetings that are likely to have overlapping attendance.

### **PRESIDENT'S REPORT**

President McCormack reported on his activities as the Association's representative, including the presentation of papers on classification societies at the Houston Marine Insurance Seminar, the definition of a seaman for Jones Act purposes at the LSU Personal Injury Seminar, the activities of the Association at a luncheon meeting of the Society of Maritime Arbitrators, and procedural issues in arbitration at a seminar jointly sponsored by the SMA, the Association and other organizations.

### **COMMITTEE AND STUDY GROUP REPORTS**

#### **Committee on Alternative Dispute Resolution**

Membership Secretary Rice reported on revisions to the Committee's proposed Guidelines for Mediation. After the Committee formally adopted the revised Guidelines and the Board studied them after the meeting, upon motion duly made and seconded, the Board resolved to approve the Guidelines for Mediation as an official document of the Association. The Guidelines will be published in the same volume of the Proceedings in which these minutes appear as part of the Report of the Committee on Alternative Dispute Resolution.

#### **Committee on Marine Financing**

Board member Bruce A. King of Seattle reported that as a result of internal procedures at the documentation office, there is a two or three day lag between the time instruments are filed and the time that their filing can be confirmed, which means that when a purchase or financing is closing, there is no way to determine whether the owner is still the owner and whether the vessel is still free and clear. Robert L. Poster of New York is drafting a letter for President McCormack to send to the Coast Guard Commandant to address these difficulties.

Mr. King also reported that a working group of the Joint Subcommittee on Vessel Foreclosures and Insolvency, which he chairs, has drafted sample mortgage foreclosure forms and hopes to publish those forms in *Benedicts* as the product of a working group.

### **Committee on Practice and Procedure**

Robert J. Zapf, Chair, reported on the status of the changes to the Admiralty Rules, which have been approved for publication and put out for public comments which will be heard at meetings in Baltimore on December 7, 1998, San Francisco on January 22, 1999 and Chicago on January 29, 1999. At the San Francisco meeting, Mr. Zapf will attend as the Association's representative and Phil Berns will attend as a representative of the Department of Justice. The Admiralty Rules will be the main topic at the San Francisco meeting. The comments and controversy at other meetings are likely to focus on the significant changes to the discovery rules. Written comments may be made at any time up to February 1, 1999.

The Judicial Council for the United States Court of Appeals for the Ninth Circuit, had proposed changes to define the type of notice to be given when property is seized and the time at which the defendant's presence within a district is determined. The Committee will make recommendations about the position to be adopted by the Association.

### **Study Group on ALI Restatement of Marine Insurance**

President McCormack has appointed as members of the Study Group Immediate Past President James F. Moseley, Past President Graydon S. Staring, Jean A. Knudsen, Chair of the Committee on Insurance and General Average, Edward F. Lebreton, III, Immediate Past Chair of that Committee, Marilyn Lytle, Chair of the Committee on Marine Ecology, and Robert H. Nicholas, Jr. The Study Group is chaired by Edward V. Cattell, Jr., of Philadelphia.

The Group is in the process of amending and amplifying a proposed plan for participating with the American Law Institute in drafting a Restatement of Marine Insurance. The plan would define the scope of the project, give a projected schedule and address issues concerning publication and control of the product. An outline of the proposed Restatement, which would be used to use the British 1906 Marine Insurance Act as a preliminary model, is being prepared by Professor Sturley.

Professor Sturley reported that the Study Group has had its first organizational meeting to discuss their role in the project. An updated version of the design proposal was distributed to the Board. The group is still refining the outline that will define the scope of the project. After exchanging drafts over the next few months, they will meet in New Orleans on March 16 to finalize the draft and hope to present it to the ALI shortly thereafter. The ALI has expressed interest in this project.

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

Theodore S. Cunningham of New York, Chair of the Special Committee on the Centennial, reported on the activities for this event. There will

be an evening cocktail party at the Boathouse in Central Park on Tuesday, May 4, 1999. The main evening event will be a black tie buffet dinner at the Museum of Modern Art on May 5, 1999 at which docents will be available to show members around the museum. On the afternoon of Thursday, May 6, 1999, there will be a maritime exhibition at the new Federal Court-house in Manhattan at 500 Pearl Street sponsored by the United States Court of Appeals for the Second Circuit, the Federal Bar Council, the Ocean Liner Museum and the Association.

The timing of Committee meetings will be adjusted to allow members to attend all the evening events.

The consensus of the Board was that an additional function on Friday night would not be necessary, unless we could be certain that Gracie Mansion would be made available.

The General Meeting on the morning of Friday, May 7, will be different as well. President McCormack advised that the Honorable Charles S. Haight, Jr., and Sir David Steele, the new Admiralty judge for the United Kingdom, had accepted President McCormack's invitations to speak at our Centennial General Meeting.

#### **Special Committee on Planning and Arrangements for the 1999 Fall Meeting**

James K. Carroll of New Orleans, Chair, reported on innovations proposed by the Committee, which was authorized to retain a meeting planner. The meeting will take place in Orlando during the week of October 11, 1999. In a subsequent vote through correspondence, the Board approved the Committee's proposals to alter the fee structure for registration.

#### **Special Committee on Planning and Arrangements for the 2001 Fall Meeting**

M. Hamilton Whitman, Jr., of Baltimore, Chair, reported that the Committee had selected San Diego as the site for the 2001 Fall Meeting, and will negotiate with hotels so as to present the best possible package to the Board at a later date.

### **INTERNATIONAL ACTIVITIES**

#### **International Maritime Organization**

First Vice President Dorsey reported on the meeting of the IMO Legal Committee which took place during the week of October 19, 1998 in London. President McCormack and First Vice President Dorsey attended as advisors to the U.S. delegation.

Four main topics were discussed: proposed changes to the 1974 Athens Convention on Passenger Claims; the proposed Convention on Wreck

Removal; the proposed Convention on Bunker Pollution; and an IMO Code on Financial Security for Maritime Claims.

#### 1974 Athens Convention on Passenger Claims

The primary focus of the Committee was on proposed changes to the Athens Convention. While the initial impetus for amending the Convention was to provide financial security for, and prompt resolution of, passenger claims, other issues, such as strict liability and direct actions against insurers, also were introduced.

To meet the desired goals of security and prompt resolution of claims, the CMI suggested that a form of personal accident insurance (PAI) be provided for each passenger by the carrier, thus providing a direct relationship between the insurer and the passenger. This would be in lieu of granting the passenger a direct right of action against the carrier's P & I Club for any claim he might have. At the close of the conference the Committee seemed to be leaning toward requiring liability insurance of the traditional type (i.e., P & I coverage). However, the Committee continues to consider PAI as a possible option available to the carrier in place of P & I coverage, if such coverage would in all respects be as favorable to the passenger as the traditional form of liability insurance. Some doubt remains whether PAI insurance will fit into a liability based regime like the Athens Convention.

A major source of disagreement in the Committee has been the basis of liability. Some delegations favored a change from the existing negligence-based liability regime in the Athens Convention to one of strict liability. Other proposals envision a first tier governed by a strict liability standard for damages within the current Athens Convention limits, and then a second tier based on negligence concepts, perhaps with a reversal in the burden of proof, for additional damages. The final report of the Committee indicates that it will proceed on the basis of the current Convention's liability regime but with a compulsory insurance requirement and the right of a direct action against the insurer. Details of this right against the insurer and the extent to which the current Convention limits may be raised remain to be resolved.

The Coast Guard has questions about the current draft which have been referred to the Association's Committee on Cruise Lines and Passenger Ships. Board Member Knudsen, who also chairs the Marine Insurance and General Average Committee, offered that Committee's assistance as well.

#### Proposed IMO Code on Financial Security for Maritime Claims

A draft of an IMO Code was produced requiring shipowners to have insurance coverage in accordance with generally accepted international standards against all the types of claims listed in the LLMC Convention.

Compliance would be voluntary. There was a great deal of support for such a code, but it was coupled with concern that it might result in an attempt to impose compulsory insurance requirements for all maritime claims. To ameliorate this concern it was suggested that the proposal be designated as "IMO Guidelines" rather than a code.

#### Proposed Convention on Wreck Removal

There was no final resolution on the proposed Convention on Wreck Removal. Agreement has been reached on certain items-such as determining the geographical scope to encompass the Exclusive Economic Zone (*i.e.*, 200 miles from the baseline), defining "wreck" to include cargo lost overboard, defining "hazard" to include dangers to underwater as well as surface navigation and including wrecks that pose threats to the environment as well as to navigation within the Convention's coverage-but many items are still hotly disputed, such as financial security issues and whether cargo will be obliged to contribute to wreck removal costs.

#### Proposed Convention on Bunker Pollution

Little progress was made on the Bunker Pollution Convention. There was considerable debate over how to channel liability, the definition of a shipowner, who will be liable and whether the limits of liability should be tied to the LLMC Convention, its 1996 Protocol or some other amount.

#### Proposed Convention on Offshore Mobile Craft

The IMO also heard, but did not discuss or consider, a CMI report on a proposed Convention on Offshore Mobile Craft. Richard Shaw, who chairs the CMI International Subcommittee on Offshore Mobile Craft, reported on behalf of the CMI that although some maritime law associations did not see the need for such a Convention, there was a substantial majority of associations in favor of the Convention. This Association has gone on record with the view that there is no need for such a Convention. A representative of the International Association of Drilling Contractors, who attended the IMO Legal Committee meeting as an unofficial observer, expressed the view that national laws covered all that was necessary and that there was no support in the industry for a Convention. The head of the U.S. delegation at a Shipping Coordinating Committee meeting a week before the IMO meeting, expressed the preliminary view that no such Convention was necessary. The Legal Committee will take up the question at its next session in April 1999.

Membership Secretary Rice reported on his representation of the Association on working groups considering the proposed Convention. In order to create a better appreciation of the International Subcommittee for the



Association's position on this subject, Membership Secretary Rice participated in meetings in Houston in mid-October which included a tour by Global Marine offshore operations.

#### **Comité Maritime International**

President McCormack, together with First Vice President William R. Dorsey, III, and Ann G. Miller of San Francisco, Chair of the Committee on Cruise Lines and Passenger Ships, responded to a questionnaire distributed by the Comité Maritime International on issues relating to proposed amendments to the 1974 Athens Convention on Passenger Claims. President McCormack noted that we will continue to respond to all CMI questionnaires, even on topics that do not directly concern U.S. interests, to make clear our Association's concern about and attention to all issues that are treated by the CMI.

#### **Arrest Convention — JIGE**

President McCormack appointed Robert J. Zapf of Los Angeles as the Association advisor to the Coast Guard at the Diplomatic Conference on the Arrest Convention which will take place from March 2 through 10, 1999 in Geneva. Mr. Zapf reported that the present draft differs from the 1952 Convention in that the new Article 7 would grant jurisdiction to courts in the place where the vessel is seized to hear the merits of the case. There is a new proposed Convention on Jurisdiction and the Effects of Foreign Judgments in Civil and Commercial Matters, which was originally intended to cover only enforcement of foreign judgments but has now gone on to define permissible grounds for jurisdiction. That proposed Convention would conflict directly with Article 7 of the proposed Arrest Convention unless the owner of the seized vessel had significant contacts with the forum in which the seizure took place. President McCormack will appoint a special study group to address these issues.

#### **UNESCO Convention on Underwater Cultural Heritage**

William T. Storz of Alexandria, Vice Chair of the Committee on Salvage, reported on the work of a special Study Group, chaired by John Kimball of New York, on the proposed Convention. The meeting was attended by Anne G. Giesecke, a marine archaeologist who has been very active in promoting the Convention and was also involved in drafting the Abandoned Shipwreck Act.

The Convention would affect property insurers as well as salvors because it incorporates a presumption of abandonment with respect to property which has been underwater 100 years, or even less if a coastal state so decides. In addition, coastal states would be able to regulate anything that might affect underwater cultural heritage, for example, cable laying and fisheries. Coastal state jurisdiction would extend to the continental shelf, and perhaps beyond.

The maritime law of salvage would be abolished with respect to objects falling within the Convention, thus eliminating any commercial incentives for their recovery. Members of the Study Group pointed to the balanced treatment accorded artifacts having archaeological value by the U.S. courts, which have imposed conditions on salvors which allow the public and scholars to benefit from the recovery of those objects.

Ms. Giesecke anticipates that a draft of the Convention will be considered at meetings in 2000 or 2001. As noted in earlier reports, the United States is not a member of UNESCO, and therefore acts only as an observer.

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

Vincent M. DeOrchis of New York, Chair of the Committee on Carriage of Goods, advised the Board about the progress of the Association's proposed COGSA legislation. The Senate hearings in April 1998 before Senator Hutchison went well, and she remains supportive, but other events in Washington have overshadowed our proposal. It is hoped that it can be reintroduced in January 1999 when Congress reconvenes.

Mr. DeOrchis has identified and is working on resolving the remaining impediments to passage of the proposed legislation. American Waterways Operators have resisted the proposal, but Senator Hutchison has urged them to work out their problems with the Association. Mr. DeOrchis is optimistic that this can be done. FIATA, a Geneva-based organization composed of freight forwarders and intermediaries, has opposed the proposal, but it appears that their objections are based on a misunderstanding of current U.S. law and of the proposed statute, particularly an unfounded fear that the proposed act would expand the bases for assertion of personal jurisdiction by U.S. courts. Mr. DeOrchis has made efforts to explain the state of existing and proposed law and to quiet their concerns. Some of the P&I clubs have expressed their apprehension that the Association's proposal would exacerbate the current lack of international uniformity in carriage of goods, but they also recognize the unlikelihood of the United States signing on to an international convention. Mr. DeOrchis and Past President Chester D. Hooper will travel to London to meet with representatives of all P&I clubs to try to increase the Clubs' understanding of the proposed legislation. Certain shipping lines have also expressed dissatisfaction with the increase in the package limitations and elimination of the error in navigation defense. President McCormack, Past President Hooper and Mr. DrOrchis will meet with representatives of these companies next month.

President McCormack reiterated that it is our policy to respond to all who have questions about the proposed legislation.

[11546]

**ARCHIVES**

Immediate Past President Moseley raised the subject of improving access to the Association's documents. Past President Kenneth H. Volk had prepared an index to our documents, and methods of disseminating these valuable resources will be explored.

**AMICUS REQUESTS**

The Board discussed whether the Association should file an *amicus* brief in the Balsa 37 case, *Bouchard Transportation Co. v. U.S.*, on the issue of whether Rule F concursus is available to claims brought under OPA. After exchange of views through correspondence following the Board meeting, the Board voted in favor of filing a brief.

\* \* \*

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