[12124]

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

Held at the
Hyatt Grand Regency Cypress Resort, Orlando, Florida,
on
October 11 and 15, 1999

The October 11 meeting was called to order by President Howard M. McCormack at 9:10 a.m. and the October 15 meeting was called to order at 8:45 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

The following Board members were present:

James W. Bartlett, III
Geoffrey F. Birkhead
Denise S. Blocker
David G. Davies
Vincent M. De Orchis
John B. Gooch, Jr.
Bruce A. King
Jean E. Knudsen
George J. Koelzer
Robert B. Parrish
James T. Shirley

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, Michael Marks Cohen of New York, Chair of the Committee on the Comité Maritime International, John P. Schaffer of Wilton, Chair of the Committee on Maritime Personnel and Alan van Praag of New York, the Association's advisor to the U.S. delegation on the Draft Convention on International Jurisdiction and the Effects of Foreign Judgments in Civil and Commercial Matters, were also present at the October 11 meeting.

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported on the imminent publication of the Proceedings for the Centennial General Meeting. There will be two Proceedings volumes published for this meeting. One booklet will reflect the business portion of the week's events, including a transcript of the oral officers' and committee reports, as well as the formal committee reports and board minutes. To will provide a further remembrance of occasion, the second booklet will be a unique Centennial publication, containing a transcript of the remarks of the special speakers at the Centennial General Meeting on May 7, proclamations honoring the Centennial, as well as written reflections of several members.

Upon motion duly made and seconded, the minutes of the August 25, 1999 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the August and October 1999 Board meetings will be published in the Proceedings of the Fall 1999 Centennial 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, 1999, and reported on the cash on hand and investments as of September 30, 1999, both of which reflect a very significant reduction in the Association's assets. This reduction resulted in part from certain extraordinary expenditures, including costs for the Centennial celebrations, advances in connection with the upcoming Fall 1999 meeting in Orlando, costs related to the development and implementation of a website, correction of a Y2K problem with our database, and travel expenses incurred in connection with our participation as advisors on international conventions and in connection with the Association's COGSA proposal.

Treasurer Bonner therefore proposed an increase in membership dues from $95 to $125 per year for proctor and nonlawyer members and from $60 to $100 per year for associate lawyer members. Upon motion duly made and seconded, the Treasurer's dues increase proposal was unanimously approved.

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Rice presented seventeen 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 four applicants had been recommended for Non-Lawyer membership. Those recommendations are:

Frank Belinske, OSG Ship Management of New York
Michelle O'Donovan, International Marine Underwriters of New York
Elizabeth E. Smith, Reliance National Insurance of New York
Ronald E. Smith, Disney Cruise Line of Orlando

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

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

S. Scott Bluestein
Michael J. Gardner
George M. Jones
Katie Smith Matison
Chris J. McGrath
Michael W. McLeod
Jeffrey J. Putnam

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

As of October 10, 1999, the Association had 3,574 members. As of October 15, 1999 after the changes approved by the Board at its meeting, the total membership was 3,618.

The Membership Secretary also reported on the status of the website and the elements it will include in its initial format, which are a listing of the Committees, the Articles of Association, the "Purposes, Organization and Activities" that currently appears in the directory, the By-Laws, a calendar of events of interest to maritime practitioners, and database access, which can be searched geographically or alphabetically. Membership Secretary Rice reported that he is receiving suggestions for links and documents to be added to the website.

In view of the access to member information through the website, the next publication of the directory in hard-copy will be in June 2000.

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.

PRESIDENT'S REPORT

President McCormack reported that he had recently sent a Newsletter to the membership reporting on items of interest to the membership. He also reported on his activities on behalf of the Association, which included the presentation of a paper entitled *The TITANIC Venture: Who Owns the Ocean Deep?* at the Houston Marine Insurance Seminar, acting as a moderator at the BIMCO Seminar on Charter Parties, and attending at meetings of the Association of Average Adjusters of the United States and MICA.

President McCormack reported on the very favorable reactions he had received from those who attended our Centennial celebrations in May 1999, particularly from our international guests including members of the CMI and other national maritime law associations, and expressed the thanks of the Association to our Centennial Committee for their extraordinary efforts in making the Centennial a remarkable success.

President McCormack also reported on efforts being undertaken to increase participation in the Association's meetings outside New York.

COMMITTEE AND STUDY GROUP REPORTS

Committee on Marine Financing

Board member Bruce A. King, Vice Chair of the Committee, reported that the Committee recommends changing the language in some proposed amendments to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692i, in order to accommodate other interests and thus make this amendment more likely to pass. Upon motion duly made and seconded, the Board unanimously passed a resolution authorizing the Committee to modify the language of their original amendment as appropriate to enable this legislation to come into force.

Study Group on ALI Restatement of Marine Insurance

Board member Jean E. Knudsen, who also chairs the Association's Committee on Marine Insurance and General Average, reported that the Study Group will make recommendations about their future to the Board in view of the American Law Institute failure to take up the Association's suggestion for a joint project.

Environmental Crimes Subcommittee

President McCormack reported that Board member and Subcommittee Chair Alfred J. Kuffler had received comments on the effect of Coast Guard All District instructions concerning the imposition of criminal penalties in connection with pollution incidents, and will be submitting a further report on this subject.

Special Committee on Planning and Arrangements for the 1999 Fall Meeting

James K. Carroll of New Orleans, Chair, reported on attendance at the meeting and the plans for the week.

Special Committee on Planning and Arrangements for the 2001 Fall Meeting

First Vice President William R. Dorsey, III, reported that the Association has signed a contract with the Hotel del Coronado in San Diego, with guaranteed numbers based on the history of attendance at the last few resort meetings.

INTERNATIONAL ACTIVITIES

Comité Maritime International

Michael Marks Cohen of New York, Chair of the Committee on the Comité Maritime International, reported on projects he is initiating. Efforts are being directed to organizing for the CMI meeting in Singapore on February 12 through 17, 2001. Association members planning to attend that meeting will be given preparatory work, and the Committee will have meetings outside those which coincide with Association meetings in order to lay the groundwork for a well-organized delegation to the Singapore meeting. Mr. Cohen also reported on the issues that are likely

to be treated at that meeting, which include transport law, piracy, reinsurance, general average and repatriation of abandoned seafarers, as well as certain proposed conventions.

Mr. Cohen reported on recent developments concerning the UNIDROIT draft Convention on Security Interests in Mobile Equipment, most significantly, the decision, after urging by the CMI, to remove ships from the scope of the proposed Convention.

The Committee's new projects will include an examination of whether the United States should denounce certain conventions, such as the Association recommended in connection with the Salvage Convention in 1996. Conversely, the Committee is also looking into whether it would make sense for the United States to adopt in domestic legislation the substantive principles of certain conventions which are in substantial agreement with our existing domestic law.

International Maritime Organization

First Vice President Dorsey reported on the meeting of the IMO Legal Committee in London that was going forward at the same time as our General Meeting in Orlando, which Immediate Past President James F. Moseley was attending as advisor to the United States delegation. Just before the Board's October 11 meeting, it was expected that the Protocol to the 1974 Athens Convention on Passenger Claims would be finalized, but reports from Past President Moseley indicated, somewhat surprisingly, that certain issues being raised for the first time were posing setbacks to the finalization of the Protocol. In fact, after considerable debate about the proposed Protocol's current draft, Professor Erik Rosneg, leader of the Norwegian delegation, suggested that the draft was not yet ready for a full diplomatic conference and should be withdrawn.

In connection with the proposed Convention on Bunker Pollution, which had also been perceived as nearing finalization, questions were raised concerning the "channeling" provision in that draft. The draft Convention's channeling provision, which is similar to OPA's responsible party provision, would perhaps deter rather than advance the goal of a speedy recovery by those who have suffered damages in that there may be an incentive for the different defending parties to squabble about what contribution each should make. The direct action provision has also been questioned because of the difficulties of administering such a plan and because there have been no problems in effecting recoveries in such cases

so far. A change was also proposed to the existing draft's language defining "pollution damage" so as not to open the door to recover for natural resource damage.

In addition to the IMO meeting, a meeting of a joint working group of the IMO and ILO was going forward in London during the week of the Association's Fall 1999 meeting. The subject under examination is whether there should be a convention to provide for repatriation of stranded seamen.

The proposed IMO Guidelines on Financial Security for Maritime Claims were passed at the November 1999 Assembly.

There has been a change in the way that the IMO formulates its work schedules so that efforts at Legal Committee meetings will be concentrated on a few of the projects nearing completion so as to move these along. Work at the next sessions will be devoted to the Athens Convention protocol and the Bunker Pollution Convention so that drafts can be ready for a diplomatic conference in either 2000–2001 or 2002–2003.

Draft Convention on International Jurisdiction and the Effects of Foreign Judgments in Civil and Commercial Matters

Alan van Praag of New York, the Association's advisor to the U.S. delegation on the Draft Convention on International Jurisdiction and the Effects of Foreign Judgments in Civil and Commercial Matters, reported on his attendance at the Hague in June 1999. The impetus for the draft Convention came from the U.S. State Department, which wished to see U.S. judgments enforced in foreign courts as most foreign judgments are enforceable in the United States.

Together with Michael Marks Cohen, Chair of the Committee on the CMI, Mr. van Praag prepared a paper supporting the enforcement of judgments in cases in which the basis for jurisdiction was *in rem* and *quasi in rem*, but these proposals did not find favor among the other delegations participating in the drafting session. The current language of the draft Convention would restrict a court seizing a defendant's property to entry of provisional rather than binding measures with respect to that property, and would also prohibit the exercise of jurisdiction unless there were a basis for the exercise of personal jurisdiction over the owner of the seized property, namely, "a sufficiently close link with the parties, the circumstances of the case, [or] the cause or object of the action." Any judgment rendered on the basis of a prohibited exercise of jurisdiction would not be entitled to inter-

national recognition and enforcement. The draft Convention would therefore conflict with Supplemental Admiralty Rules B and C, and the provisions of the 1999 International Convention on Arrest of Ships and the 1993 International Convention on Maritime Liens and Mortgages.

Other problems with the draft language exist in connection with *forum non conveniens* and the effect and enforceability of decisions rendered by default.

The Association has previously submitted a position paper criticizing the current draft Convention's provisions as unworkable in the context of American maritime law and industry, particularly in connection with ship financing, extension of credit to vessels, and enforcement of claims for personal injury, cargo damage and other tort claims, because the draft Convention would impair the ability of claimants to seize the vessel as security and to exert jurisdiction over responsible parties. The position paper suggests resolutions to the problems noted above, particularly the addition of a provision that nothing prohibits a court's exercise of jurisdiction in maritime cases based upon a court's seizure of maritime property in accordance with national or international law.

Upon motion duly made and seconded, the Board resolved to authorize Mr. van Praag and President McCormack to continue to work with the State Department in an effort to resolve some of the problems that are posed by the current draft Convention.

UNESCO Convention on Underwater Cultural Heritage

First Vice President Dorsey reported on recent developments in connection with the draft Convention. The CMI is now demonstrating interest in this issue, and has sent a questionnaire to all constituent members seeking information about their national laws relevant to the matters treated in the draft Convention. In addition, U.S. government representatives have recognized the necessity of protecting the rights of commercial interests. At present, however, many of these representatives still take the view that it would be best to have an agency administer all aspects of underwater cultural heritage while the Association's conviction is that law of salvage, administered by admiralty judges, would be more effective in assuring the protection of the rights of all interested parties in whatever regime may be proposed. There is currently a dialogue between a working group of the Association and the State Department about these positions, to explore the possibility of a middle ground and to learn how the government envisages this Convention actually working in practice.

PROPOSED LEGISLATION ON CARRIAGE OF GOODS

Vincent M. De Orchis of New York, Chair of the Committee on Carriage of Goods, on the current status of the Association's COGSA proposal. Mr. De Orchis advised that congressional representatives were seeking assurance that the Association's proposal was not by lawyers, for lawyers, but rather an initiative based on industry need and support. Mr. De Orchis noted that AWO, FIATA and the NIT League now support the Association's proposal, and that NIT League had written a letter to Senate staff endorsing the need for this legislation.

At the Senate's request, Mr. De Orchis and his working group prepared a summary of the legislation. He also advised the Board of four changes that have been incorporated in the most recent Senate draft, three of which are clarifications of the original proposal and in no way change its intent.

The fourth item concerns the original proposal's provision providing for court-ordered arbitration in the United States, at the shipper's election, when the bill of lading contains a foreign arbitration clause. The intention of the original provision was to codify existing law, particularly the *Indussa* case, but this provision has been the subject of the most pointed criticism from the Senate as well as domestic and international interests, evoking, *inter alia*, concerns about potential conflict with the United States' obligations under the New York Convention on Recognition and Enforcement of Foreign Arbitration Awards. The present Senate draft provides for litigation in the United States when certain criteria are met. In so doing, it is consistent with the Hamburg rules in permitting suit to be brought in the loading and discharging ports as well as in the place designated in the bill of lading. In effect, the current draft opens the doors of the courts of the legislating country.

At the Board's meeting in Charleston, 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." At their October 1999 meeting, the Board renewed their support of this principle by unanimously resolving, on motion duly made and seconded, that the Chair of the Association's Committee on Carriage of Goods and the COGSA proposal working group are authorized to agree on the Association's behalf to changes in the language of the proposal as are necessary to promote

adoption of the proposal as legislation so long as such changes are consistent with the previous action taken by members.

CHALLENGES TO JUDGE-MADE MARITIME LAW

First Vice President Dorsey reported on developments in this area, noting that Professors Force and Gutoff have written articles supporting the long-held view that the constitutional grant of admiralty jurisdiction to the United States courts provides them with power not only to hear admiralty cases but also to formulate substantive maritime law. These articles respond to recent publications by some respected authors who take the position that *Erie's* holding that there is no federal common law compels the conclusion that state law should be applied in maritime cases. Vice President Dorsey noted Professor Force's suggestion that the Association collect articles supporting the long-held viewpoint in a single publication, and asked all members who are involved in or hear of cases involving this issue to get in touch with President McCormack, so that the Association can intervene as *amicus* in appropriate circumstances.

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There being no further business to come before the Board, the October 11 meeting was adjourned at 12:10 p.m. and the October 15 meeting was adjourned at 9:10 a.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary