

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

Held at the
The Omni Hotel, Chicago, Illinois,
on
August 5, 2000

The meeting was called to order by President William R. Dorsey, III, at 9:00 a.m. In addition to President Dorsey, the following officers were present:

Raymond P. Hayden, First Vice President
Thomas S. Rue, Second Vice President
Lizabeth L. Burrell, Secretary
Patrick J. Bonner, Treasurer
Winston Edward Rice, Membership Secretary
Howard M. McCormack, Immediate Past President

The following Board members were present:

James W. Bartlett, III
Vincent M. DeOrchis
John B. Gooch, Jr.
Bruce A. King
Jean E. Knudsen

George J. Koelzer
Robert B. Parrish
Mary Elisa Reeves
Alan van Praag
James F. Whitehead, III

At the invitation of President Dorsey, Warren J. Marwedel, who together with Kimbley A. Kearney graciously headed the group hosting the Board in Chicago, was also present at the meeting. President Dorsey thanked all the members of the Chicago maritime bar for making such wonderful arrangements for this meeting.

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported on the publication and distribution of the Proceedings for the Spring 2000 General Meeting.

Upon motion duly made and seconded, the minutes of the May 4, 2000 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the March and May 2000 Board meetings were published in the Proceedings of the Spring 2000 General Meeting.

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on April 30, 2000, and reported on the cash on hand and investments as of that date, both of which reflected the cost of our participation as advisors on international conventions and in connection with the new COGSA proposal.

Treasurer Bonner also noted that there is a lag in dues payments, and that members who remain in arrears have been dropped from the membership. We must continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the next two years, including the upcoming CMI meeting in Singapore.

Upon motion duly made and seconded, the Board unanimously approved a change in the Association's accountant and auditor to Goldstein Golub.

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Winston E. Rice presented twenty applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

The Proctor Admissions Committee recommended that two members be advanced to Proctor status. They are Captain Malcolm J. Williams and John Kirk Trombley. Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved.

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

Donald W. Bruce of Jersey City
The Honorable Joe J. Fisher,
U.S.D.J., of Beaumont
Frederick D. Gabel of New York
James J. Higgins of New York
Decatur J. Holcombe of Houston

Bernard Rolnick of New York
The Honorable John M. Shaw,
U.S.D.J., of Lafayette
James L. Shupp, Jr.
of New Orleans
The Honorable Daniel H.
Thomas, U.S.D.J. of Mobile

Membership Secretary Rice reported that a new edition of the Directory will be published in the Fall.

After May 4, 2000 Board meeting, the Association had 3,424 members. As of May 4, 2000, after the changes approved by the Board at its meeting, the total membership was 3,454.

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

On behalf of the Association, President Dorsey attended London Maritime Week, May 8 through 12, during which he acted as both chair as well as a panelist treating maritime casualty investigations at the Tulane program entitled "Maritime Law in an International Setting." President Dorsey also attended the British Average Adjusters meeting and dinner, and represented the Association at the CMI Assembly meeting.

President Dorsey also reported on his attendance at the meeting of the Canadian Maritime Law Association, which took place in Halifax on July 23 at the same time as Op Sail 2000.

COMMITTEE AND STUDY GROUP REPORTS

Carriage of Goods

Board member Vincent M. DeOrchis, former Chair of the Association's Committee on Carriage of Goods, reported that Senator Hutchinson contin-

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ued to support the Association's COGSA proposal, as she confirmed in a June newspaper article. Past President Chester D. Hooper recently spoke with Senator Hutchinson's chief of staff, who was in the process of considering some editing of the proposal. It appears that any introduction of COGSA will have to await the outcome of the November presidential election.

NIT League has been focusing mainly on the Ocean Shipping Reform Act, which will probably cover about 80% of the trade to the United States by the end of the year, and its provisions for service contracts between carriers and large shippers.

The State Department issued a statement that they would not voice any opposition to the COGSA in view of U.S. industry support for the proposal.

Practice and Procedure

The Board was advised by Board member James W. Bartlett, III, Chair of the Committee, that an amendment has been proposed to the Local Admiralty Rules for the United States District Court for the District of New Jersey that would increase the security deposit for seizure of vessels more than 65 feet in length to \$10,000. Upon motion duly made and seconded, the Board resolved to authorize President Dorsey to send a letter to the Clerk of the Court noting that the security deposit in every district should reflect the reasonably anticipated costs to be incurred by the Marshal and recommending that the proposed amendment not be adopted because it might discourage legitimate claimants from exercising their admiralty rights.

Environmental Crimes Subcommittee

Senator Breaux of Louisiana and Congressmen Vitter, Coble and Clement have introduced bills which would preclude the use of the strict liability provisions of the Refuse Act and Migratory Bird Act for criminal prosecutions arising from oil spills, and would restrict criminal liability from oil spills exclusively to that provided by OPA '90 through its amendments to the Clean Water Act. These bills reflect the Association's position stated last year to the House Committee on the Coast Guard and Marine Transportation.

Study Group on the Marine Insurance Project

Immediate Past President Howard M. McCormack reported that the Study Group is going forward with its work and expects to have a draft of the scope of the project by the Fall 2000 meeting of the Association.

Special Committee on Site Selection for the Fall 2003 General Meeting

Board member Robert B. Parrish reported on the efforts of the Special Committee, chaired by Ben L. Reynolds of Houston, to find an appropriate site for the Fall 2003 meeting of the Association.

Merger of the Committee on Alternative Dispute Resolution with the Committee on Maritime Arbitration and Mediation

These Committees and their membership have been merged.

INTERNATIONAL ACTIVITIES

Comité Maritime International

President Dorsey reported on the CMI Assembly meeting in London in May, and provided a copy of Frank L. Wiswall, Jr.'s comprehensive report on the meeting of the CMI Executive Council. The CMI's finances are on a better footing, and certain national associations which were substantially in arrears on their dues have been expelled. The dues of national associations and titular members will be raised next year.

At the Assembly meeting, Secretary Elizabeth L. Burrell, CMI Committee Vice Chair Christopher O. Davis and Life Member Warren M. Faris were elected to titular membership.

The Association will nominate Frank Wiswall to serve another 4-year term as Vice President of the CMI.

One of the most significant CMI endeavors to be treated during the plenary meeting in Singapore in February 2001 is the work of its CMI's International Study Group on Transport Law, which is considering methods of bringing about greater uniformity in international transport by harmonizing and filling gaps in existing international regimes for transport. Mr. DeOrchis, who, together with Past President Hooper, George F. Chandler, III, and Professor Michael Sturley (the Study Group's Rapporteur), attended the CMI/UNCITRAL Colloquium on Transport Law at the United Nations in July, reported on the Study Group's progress. One subject on which controversy continues is whether multimodal transport should be covered. A working paper should be ready for discussion in Singapore. There will be a further meeting of the Study Group in London in October.

Other subjects to be discussed at the Singapore plenary meeting include the CMI's efforts to prepare a model law on piracy to be submitted to the national associations for their comments. The International Union of Marine Insurers (IUMI) has proposed changes to the York-Antwerp Rules, primarily to do away with general average contributions for port of refuge charges (a position opposed by the Association), which will be discussed at the Singapore meeting. The CMI's International Marine Insurance Subcommittee will also meet, with the topics to be narrowed at the upcoming CMI colloquium in Toledo in September.

The Executive Council of the CMI also decided to monitor and oppose the UNESCO draft Convention on Underwater Cultural Heritage in its present form. The CMI has taken no position on the Association's COGSA bill.

UNCITRAL

President Dorsey reported on the recent the Colloquium on International Transport Law held by the CMI and UNCITRAL (the United Nations Commission on International Trade Law), which took place at the United Nations in July. Speakers who included government officials and members of industry appeared to agree that the time was ripe for a new international transport convention. Themes included uniformity, harmonization, globalization, e-commerce and multimodal transportation.

International Maritime Organization

President Dorsey will attend the meeting of the IMO Legal Committee in London from October 15 through 20, 2000 as a private sector advisor to the U.S. delegation. The two main topics will be the Committee's continuing work on a draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea and a new item, proposed amendments to the limits of oil pollution liability under the Civil Liability Convention and the IOPC Fund Convention.

In an attempt to resolve the difficulties in reaching acceptable terms on the Athens Convention Protocol, a compromise has been proposed which would create a two-tiered system of liability, the first imposing strict liability with a per capita damages cap for death or personal injury incurred in connection with an "operational incident," such as shipwreck, collision, stranding, explosion, fire or a defect in the ship, and the second tier imposing liability based on negligence for damages resulting from operational incidents that exceed the strict liability per capita limit and for

damages resulting from all other causes. Compulsory insurance is part of the compromise proposal, with a direct right of action against the insurer. In the second tier liability scheme, negligence on the part of the carrier would be presumed, so the carrier would have the burden of proving that it was not careless. The per capita limits of the first tier strict liability would be left to a diplomatic conference.

The new item-proposed amendments to the limits of oil pollution liability under the Civil Liability Convention and the IOPC Fund Convention—arose from the ERIKA incident off France, in which the total cost of incident response efforts and compensation claims is estimated to exceed the compensation available under the CLC and Fund Conventions. CLC Article 15 and Fund Convention Article 33 both provide for amendment of the liability limits by contracting states at an IMO Legal Committee meeting without the need to convene a diplomatic convention, so this procedure may be invoked at the upcoming Legal Committee meeting in October 2000.

Thanks to the efforts of members Michael Marks Cohen, Paul S. Edelman, John P. Schaffer (Chair of the Committee on Maritime Personnel) and Douglas B. Stevenson, the Association was able to provide a comprehensive response to the Coast Guard so that they could formulate answers to the IMO/ILO Ad Hoc Working Group on Repatriation of Seamen.

UNESCO Convention on Underwater Cultural Heritage

John D. Kimball, Chair of the Association's Study Group on Underwater Cultural Heritage, provided the Board with an extremely informative report on the Third Meeting of Governmental Experts, which he attended at UNESCO headquarters in Paris from July 3 through 7. No consensus was reached on either the draft Convention or its Annex, and therefore no vote was taken on either document. Major issues remain to be resolved, but the present drafts would prevent salvors from any contact with underwater cultural heritage, except as contractors to an archaeological or government groups, and would ban the sale of all salvaged items. This Association has taken the position that salvors and archaeologists should be able to reach a solution that would preserve the interests of each.

The United States delegation did an excellent job of presenting well-balanced positions on a number of important issues—for example, the inclusion of a “significance” requirement in the definition of underwater

cultural heritage, recognizing that *in situ* preservation is a management tool and not a legal presumption, opposing an outright ban on the application of the laws of salvage and finds, and requiring consistency with UNCLOS—but there is still great opposition from other delegations on these issues.

While it was intended for a draft of the Convention to be ready by April 2001, it appears unlikely that this will be accomplished.

President Dorsey expressed his gratitude for the tremendous investment of time and effort graciously given by Mr. Kimball and other members who have devoted so much to the Association's projects.

Convention on Enforcement of Judgments

Board member Alan van Praag reported on the status of the Convention. Congress appears to be eager to act, but at the last meeting at the Hague, there was some opposition to key U.S. positions, as a result of which there will be a meeting of a group of experts to try to resolve some of the difficulties.

DEATH ON THE HIGH SEAS ACT

The Coast Guard authorization bill currently pending before Congress includes provisions that would modify DOHSA to allow survivors to recover noncompensatory damages. The President will consult with the Chairs of the Committees on Maritime Legislation and Maritime Personnel to determine what, if any, action the Association should take in connection with the bill.

TITANIC GUIDELINES

Pursuant to a 1986 congressional act, the State Department has been negotiating an international Agreement with Canada, France and the United Kingdom establishing the TITANIC as a memorial. The proposed Agreement provides rules in many respects similar to those in the Annex Rules to UNESCO Draft Convention on Underwater Cultural Heritage, including *in situ* preservation as the preferred management of the site and provisions for stringent State oversight and management of the wreck.

In June, NOAA published "Proposed Guidelines for Research, Exploration and Salvage of R.M.S. TITANIC," which are identical to the pro-

posed Agreement rules, including provisions prohibiting any recovery of any artifacts unless "justified by educational, scientific, or cultural interests," requiring that any recovered items be kept together as a project collection and prohibiting the sale of any artifacts, except in a sale or transfer of the entire collection to a museum.

With Board approval, and with the able assistance of John D. Kimball and Professor David Bederman, President Dorsey submitted comments on the Guidelines and posed questions to NOAA about the effect of several of the guidelines. No response has yet been received. A suit has been brought by RMS Titanic Inc., the party granted exclusive salvage rights, to enjoin the United States from proceeding with the Agreement.

AMICUS BRIEFS

President Dorsey reported that since the May meeting, he had received three requests for the Association's participation as *amicus*. The first request involved issues of the definition of abandonment in salvage law in *Columbus America Discovery Group v. Atlantic Mutual Insurance Co.*, and *Yukon Recovery, LLC v. Certain Abandoned Property*. Because the request was deemed not to fall within the very exacting requirements set forth in By Law 702.3, it was declined.

The second request came in connection with *Mobil Mining and Minerals v. David R. Nixon and Director, Officers of Workers Compensation Programs*, which involved the issue of whether the non-maritime sections of a manufacturing facility at which vessels are loaded and discharged are "customarily used" for vessel cargo operations and thus are "covered sites" for the purposes of the Longshore and Harborworkers Compensation Act. Because of the conflict among the Circuits on this issue, the Board voted to support the petition for *certiorari* in order to have the question decided, but to refrain from taking a position on the merits if the Court accepts the case.

The third request was made in *Stepansky v. Florida*, which involves the assertion of criminal jurisdiction by the State of Florida over an alleged crime committed on the high seas. The Board voted not to enter the case at this time.

RESOLUTIONS HONORING MEMBERS

President Dorsey presented a resolution honoring USCG Captain Malcolm J. Williams, Jr., Chief of the Office of Maritime and International

Law, on his retirement from the Coast Guard. Upon motion duly made and seconded, the Board unanimously passed the following resolution:

The Maritime Law Association of the United States expresses its appreciation for the services and exemplary assistance of Malcolm J. Williams, Jr., Captain, United States Coast Guard, Chief, International Law Division, Washington, D.C.

Captain Williams has been a dedicated officer of the United States Coast Guard, serving with distinction in numerous responsibilities and capacities. In his service to his County and the Coast Guard, he has carried out his duties as Chief of the International Law Division in an outstanding manner. These duties included participating as the Chief Delegate of the United States to the International Maritime Organization, IMO Legal Committee and at diplomatic conferences and international meetings.

Although heavily involved in the aforementioned duties, Captain Williams participated in, and closely coordinated numerous significant activities of, The Maritime Law Association of the United States by making presentations to various and numerous Committees of the Association on topics of maritime law, marine ecology, government regulations, procedure, Coast Guard policy and other matters. In performing these tasks during the last four years, he has consistently educated and informed the members of The Maritime Law Association of the United States. Further, he brought to the Association, not only expertise and knowledge, but a sense of comradery, friendship and collegiality. In so doing he brought the Coast Guard and the Association into a much closer relationship.

In consideration of the foregoing:

BE IT RESOLVED, that The Maritime Law Association of the United States expresses its sincere and profound appreciation for the services and assistance of Captain Malcolm J. Williams, Jr., and we express our gratitude to our professional colleague and friend.

BE IT FURTHER RESOLVED, that a copy of this Resolution be made a part of the permanent records of the Association.

President Dorsey and the Board also congratulated Board Member Jean E. Knudsen on her nomination as Chair of the Average Adjusters Association of the United States.

President Dorsey reported that the Association had made a donation to Lenox Hill Hospital in memory of Past President James J. Higgins, and the Board, upon motion duly made and seconded, unanimously passed the following resolution:

The death of James J. Higgins on June 20, 2000 marked the passing of a valued and distinguished member of the Maritime Law Association of the United States.

Jim Higgins was a graduate of Manhattan College and took his law degree at Fordham University. He was admitted to the bar in 1947. A few years after obtaining his law degree he joined the firm of Kirlin, Campbell & Keating, eventually becoming a partner. He remained with that firm for the rest of his professional life.

He distinguished himself in the maritime field by dedicating his career to the specialty of admiralty law. He first joined the MLA in 1948 and was an active participant in the affairs of the Association until his retirement. After chairing various committees he quickly rose to positions of leadership within the Association. He served as Membership Secretary from 1959 to 1961, Secretary from 1961 to 1966, and First Second Vice President from 1966 to 1968. In 1968 he was elected President of the Association and served in that capacity until 1970. For many years until his death he also served as Parliamentary Aide to the MLA. He was also a Titulary Member of the Comité Maritime International.

In addition to his reputation for competence and expertise in the field of maritime law, Jim Higgins was well known for his wit and great personal charm. Despite his eminence and stature, he was never too busy to assist young lawyers and to help promote their careers in the field of maritime law and within the Association. With his

high professional skills, unfailing courtesy, and great sense of humor he epitomized the best of his profession and the Association.

James J. Higgins was respected by the Bench and Bar. His death is a great loss to his numerous friends, family, community and this Association. He will be greatly missed, but never forgotten.

In consideration of the foregoing:

BE IT RESOLVED, that the Maritime Law Association of the United States expresses its sincere and profound appreciation for the life and services of James J. Higgins and that it does hereby express to his wife, Patricia, and his family our deepest sympathy and great sense of loss.

BE IT FURTHER RESOLVED, that a copy of this Resolution be made a part of the permanent records of the Association and the original duly inscribed by the President of this Association be forwarded to his wife, Patricia Higgins.

ASSOCIATION RECORDS: WEBSITE STATUS and ARCHIVES

President Dorsey reported that the Chair of the Committee on Electronic Communications and Commerce, Glen T. Oxton, will be the new webmaster. The Events Calendar will be channeled through the President, so information about upcoming events of interest to the maritime community should be sent to President Dorsey. The Committee has proposed a draft website policy, which is being considered by the officers and Board. The Association will move cautiously in adding features to the website in order to maintain the security of its databases, but we will move forward with a document library on the site.

Accordingly, upon motion duly made and seconded, the Board approved a resolution authorizing the expenditures necessary to add the library to the Association's website, and to start making the Proceedings available on the site. We would then work backwards, adding older and older Association documents.

President Dorsey also noted that with the assistance of the Young Lawyers Committee, the Association's archives are being indexed, build-

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ing upon the major work already accomplished on that endeavor by Past President Kenneth H. Volk.

OTHER ASSOCIATION ACTIVITIES

Second Vice President Thomas S. Rue reported on his tabulation of the results of the questionnaires sent out to the membership about our resort meetings. It appears that of those responding, many would like an increase in CLE credit and business-associated activities and a shorter meeting duration. The Committees on Site Selection and Planning and Arrangements for the Fall meetings will try to incorporate these preferences into their planning.

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There being no further business to come before the Board, the meeting was adjourned at 12:15 p.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary
