

**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 2, 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 E. Rice, Membership Secretary
Howard M. McCormack, Immediate Past President

The following Board members were present:

James W. Bartlett, III	Jean E. Knudsen
Geoffrey F. Birkhead	Robert B. Parrish
James K. Carroll	Mary Elisa Reeves
Vincent M. DeOrchis	Alan van Praag
John B. Gooch, Jr.	James F. Whitehead, III
Bruce A. King	

At the invitation of President Dorsey, Michael Marks Cohen of New York, Chair of the Committee on the Comité Maritime International, Alfred J. Kuffler of Philadelphia, Chair of the Environmental Crimes Subcommittee, Ben L. Reynolds of Houston, Chair of the Special Committee on Site Selection for the Fall 2003 General Meeting, and M. Hamilton Whitman of Baltimore, Chair of the Special Committee on Planning and Arrangements for the 2001 Fall Meeting, were also present at the meeting.

SECRETARY'S REPORT

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

Upon motion duly made and seconded, the minutes of the August 5, 2000 meeting of the Board of Directors were unanimously approved and accepted, and the Secretary was authorized to amend the minutes of the August 2000 meeting to reflect more accurate dates in the resolution honoring Past President James J. Higgins. The minutes of the August and November 2000 Board meetings will be published in the Proceedings of the Fall 2000 General Meeting.

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

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on July 31, 2000 and distributed copies of the auditors' report for the fiscal year ending April 30, 2000, which found the Association's accounting to be proper. Treasurer Bonner reported on the cash on hand and investments as of the date of the meeting, both of which reflected the cost of our participation as advisors on international conventions, and on the substantial expenditures anticipated in the coming year.

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Treasurer Bonner also noted that there is a continuing 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 Treasurer's report was unanimously approved and accepted.

MEMBERSHIP SECRETARY'S REPORT

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

The Board approved Professor Martin Davies of Tulane University Law School as a new Academic member.

The following four applicants were recommended for Non-Lawyer membership:

Mary Cervati of Weehawken
Massoud Messkoub of Madison
Carroll C. Robertson of Alexandria
Soren Wolmar of New York

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

The Proctor Admissions Committee recommended that two Associate Lawyer members be advanced to Proctor status. They are:

Randolph H. Donatelli of New York
James M. Maloney of Port Washington

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:

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George H. Chamlee of Savannah
John B. Culp, Jr. of Jacksonville
The Honorable David N. Edelstein, U.S.D.J., of New York
G. Sage Lyons of Mobile
William G. Symmers of New York

After August 5, 2000 Board meeting, the Association had 3,441 members. As of November 2, 2000, after the changes approved by the Board at its meeting, the total membership was 3,461.

Membership Secretary Rice reported that the new Directory has been published and should be in the hands of the membership in November 2000. That Directory includes an amplified history of the Association and streamlined Committee descriptions. A new Directory will be published in the Fall of 2001.

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.

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 was awaiting confirmation of industry support for the Association's proposal. Because of the current posture in Washington, there will be no action on the proposal until the next session of Congress in January 2001, at which time a bill number will be assigned.

Several Board members commented on the need for a revised COGSA in view of the increasing fragmentation of the law in this area.

Practice and Procedure

At the August 5, 2000 Board meeting, the Board was advised by Board member James W. Bartlett, III, Chair of the Committee, that an amendment had 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 on August 5, 2000 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. On August 10, 2000 President Dorsey sent such a letter to the Clerk of the Court, as well as Chief Judge Thompson and Judge Bissell of that Court. President Dorsey reported on November 2, 2000 that he had received a reply indicating that the Court had withdrawn the proposal and would seek further commentary from the bar on the proposed amendment.

The Committee on Practice and Procedure will also review the decision of the United States Court of Appeals for the Eighth Circuit in *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000), and make a recommendation about whether or not the Association should participate as *amicus* in that court's *en banc* reconsideration of that opinion, which holds that the court's current practice and policy concerning unpublished decisions are unconstitutional.

Environmental Crimes Subcommittee

Alfred J. Kuffler of Philadelphia, Chair of the Environmental Crimes Subcommittee, reported that in the October 18, 2000 Federal Register, there was a Notice of a Public Meeting requesting comments on setting the Coast Guard agenda for oil pollution. The meeting will take place on December 12.

Mr. Kuffler conferred with Dennis L. Bryant, Chair of the Committee on Navigation, Coast Guard and Government Regulation, and Matthew A. Marion, Chair of the Committee on Marine Ecology, to seek the views of these Committees on the subjects to be addressed at the Public Meeting. The Committees recommended that the Association submit a statement to be presented at the Public Meeting to state the Association's views on government policy in connection with pollution incidents.

Upon motion duly made and seconded, the Board authorized Mr. Kuffler, Mr. Bryant and Mr. Marion to draft a statement to be sent by President Dorsey to the Coast Guard stating that the current government policy of criminalizing acts in connection with pollution incidents actually works against the public interest in protecting the environment, proposing that only acts taken with criminal intent be subject to criminal

sanctions, and urging the government to adopt as its most important priority policies which encourage effective responses to spills. After the Board meeting, such a statement was drafted and approved by the relevant Committees. In a vote by poll, the Board approved the proposed statement and President Dorsey sent it to the Coast Guard.

Special Committee on Site Selection for Fall 2003 and 2005 General Meetings

Chairs Ben L. Reynolds of Houston and Robert B. Parrish of Jacksonville reported on Princess properties in Scottsdale and Bermuda as appropriate sites for the Fall 2003 and 2005 meetings of the Association. Upon motions duly made and seconded, the Board approved Bermuda as the location for the Fall 2003 meeting and Scottsdale as the location for the Fall 2005 meeting, delegated authority to the Chairs of the Site Selection Committees to negotiate with the Princess properties for appropriate dates, and delegated authority to approve the final contracts for these sites to the President and First and Second Vice Presidents.

INTERNATIONAL ACTIVITIES

Comité Maritime International

First Vice President Raymond P. Hayden of New York reported on the CMI colloquium which took place in Toledo in September 2000 in order to discuss items to be treated at the upcoming CMI plenary meeting in Singapore from February 12 through 16, 2001. Topics included international transport law, piracy, marine insurance and the proposals by the International Union of Marine Insurers (IUMI) in connection with general average, primarily to do away with general average contributions for port of refuge charges (a position opposed by the Association).

President Dorsey reported that in the CMI elections, the Association nominated Frank L. Wiswall, Jr. for a second four-year term as Vice President of the CMI, and supported Patrick Griggs for a second term as President and Joanne Gauthier of Canada for membership on the Executive Council. The Association will propose Lawrence J. Bowles of New York, Vincent M. DeOrchis of New York and Michael Sturley of Austin as new Titulary members.

Michael Marks Cohen of New York, Chair of the Committee on the CMI, reported on the issues to be treated at the upcoming plenary and the preparations by the U.S. delegation. At Singapore, Past President Graydon

S. Staring will head the Association delegation's working group on marine insurance, Howard Myerson will head the Association delegation's working group on general average, Past President Hooper will head the Association delegation's working group on transport law and George Gabel will head the Association delegation's working group on piracy.

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 Subcommittee 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. Board member Vince DeOrchis reported on the fourth meeting of the International Subcommittee on Transport Law, which he attended together with Past President Chester D. Hooper, George F. Chandler, III, and Professor Michael Sturley (the Subcommittee's Rapporteur) in London in October 2000. The question of whether a new convention will cover multimodal transport has not yet been decided. A draft outline of an instrument has been prepared and will be discussed at the Singapore meeting. While it is not anticipated that there will be a complete draft convention ready in time for consideration at the CMI plenary in February, there will be discussion of existing liability regimes, multimodal carriage and transport documents. The U.S. delegation at Singapore will try to support positions consistent with the COGSA proposal and the Pomerene Act, but there are issues, for example, shipper's liability, on which the Association has not yet taken a position. After the Singapore meeting, there will be a further meeting of the International Subcommittee in May 2001 to prepare a consultation paper to be sent to all constituent members of the CMI as well as industry representatives through the assistance of UNCITRAL. Comments from these groups should be received by November 2001, and it is anticipated that a draft will be prepared for the UNCITRAL meeting in May 2002. The CMI will participate in further refinement, together with UNCITRAL, over the following two or three years. UNCITRAL would probably not act on the draft until 2005.

In connection with the developments on the UNCITRAL project on sea transport law, the Association may have to take a position on whether or not the CMI should vary its usual procedure of producing a major instrument only after having it first considered at a plenary. In the case of the sea transport project, the proposal is for representatives of CMI members on the International Subcommittee to approve a draft, and to take the resulting instrument directly from the Assembly to UNCITRAL. At the upcoming plenary, the discussions of transport law will focus on four documents that will be published in the CMI's 2000 Yearbook: The first is

the current draft outline (a rough draft of the instrument), the second an agenda paper on multimodal transport, the third an agenda paper on transport document issues and the liability regime and the fourth is a paper on the e-commerce implications of the draft instrument.

Apart from issues of transport law, 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, several marine insurance issues (on which discussion documents are not yet available) and the IUMI proposals concerning general average. Because discussion documents have not yet been circulated and there may be proposals on which the Association has not taken any position, the Board will stand ready to advise the delegation on issues as they arise.

In addition, John D. Kimball, Chair of the Association's Study Group on Underwater Cultural Heritage, has been appointed Rapporteur of the CMI's working group on Underwater Cultural Heritage. The CMI study group may be redesignated as an international subcommittee at the Singapore conference, with the purpose of preparing a report for the CMI 2001 Assembly on the UNESCO draft Convention on Underwater Cultural Heritage that may include as a recommendation the preparation of a protocol to the Salvage Convention along the lines of the protocol prepared by the late Geoffrey Brice.

International Maritime Organization

President Dorsey attended 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 were 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 (CLC) and the IOPC Fund Convention.

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. This procedure was invoked at the upcoming Legal Committee meeting in October 2000 to make a tacit amendment to the CLC and IOPC Fund increasing liability limits by 50.37%, which will take effect in November 2003.

As for developments in the Athens Convention draft protocol, proposals have been drafted: (1) that would make it clear that a carrier's, as

opposed to an insurer's, liability was not subject to a "cap"; (2) impose 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; (3) reverse the burden of proof and impose 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. Recent ferry accidents may encourage progress on the protocol because without an international regime, there is a possibility that conflicting national legislation may be enacted in response to these incidents.

The next Legal Committee meeting will take place from October 8 through 12, 2001.

A diplomatic conference on the Bunker Pollution Convention will be held from March 19 through 23, 2001, the only open question being the gross tonnage of the vessels subject to the Convention. The chair of the IMO has indicated that the Athens Convention Protocol will be ready for a diplomatic conference in 2002 or 2003.

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. There will be a meeting of all delegations in June 2001.

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 consulted 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, but because the legislation has stalled because of opposition from the cruise ship industry, there was no need for action at the time of the Board meeting.

TITANIC GUIDELINES

Pursuant to a 1986 congressional act, the State Department has been negotiating an international Agreement with Canada, France and the

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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 proposed 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.

Previously, 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.

The suit brought by RMS Titanic Inc., the party granted exclusive salvage rights, to enjoin the United States from proceeding with the Agreement, has been dismissed on the ground that the issue is not ripe because there is not yet a treaty nor guidelines.

ASSOCIATION RECORDS: WEBSITE STATUS and ARCHIVES

In addition to authorizing modifications necessary to add Association documents to the website, the Board, upon motion duly made and seconded, approved adding a search engine to the website in a vote taken by poll between regular meetings.

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There being no further business to come before the Board, the meeting was adjourned at 12:10 p.m.

Respectfully submitted,

/s/ Elizabeth L. Burrell
Secretary