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**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
May 3, 2001

The meeting was called to order by President William R. Dorsey, III, at 9:30 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	George J. Koelzer
Geoffrey F. Birkhead	Robert B. Parrish
Vincent M. DeOrchis	Mary Elisa Reeves
John B. Gooch, Jr.	Alan van Praag
Bruce A. King	James F. Whitehead, III
Jean E. Knudsen	

At the invitation of President Dorsey, James Patrick Cooney of Houston, Chair of the Committee on Uniformity of U.S. Maritime Law, Sandra L. Knapp of Philadelphia, Chair of the Committee on Marine Financing, 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 arrangements for the General Meeting and other administrative matters.

Upon motion duly made and seconded, the minutes of the March 27, 2001 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the March 2001 Board meeting, together with the Minutes of this meeting, will be published in the Proceedings of the Spring 2001 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 January 31, 2001. 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 in international activities, and on the substantial expenditures anticipated in the coming year. Treasurer Bonner commented that the Treasurer's Report for the three months ending on January 31, 2001 reflected the financial position at the least favorable time of year because the dues had not yet starting coming in at that time, but even in view of the timing, we are in a somewhat better financial position than we were at the same time last year. We must, however, continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the coming years, including the large expenditures expected for the Directory and participation in international activities. Nonetheless, we expect to be able to participate fully in all current areas of endeavor.

Those who have fallen behind on their dues payments are being purged from the membership.

Treasurer Bonner also reported on the filing of the Association's tax returns.

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 eight applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

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

John Daidola of New York
Harry Diamond of New York
Charles Droll of New York
Eileen Fellin of New York
Catherine O'Connell of New Jersey
David Roberts of New York

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

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

Michael J. Armitage of Long Beach
Robert J. Clyne of New York
R. Brett Kelly of New York
David S. Smith of Beverly

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

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

The Honorable J. Edward Lumbard of New York
The Honorable Lansing L. Mitchell of New Orleans
Professor Stefan A. Riesenfeld of Berkeley

After March 27, 2001 Board meeting, the Association had 3,327 members. As of May 3, 2001, after the changes approved by the Board at its meeting, the total membership was 3,345.

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.

INTERNATIONAL ACTIVITIES

Comité Maritime International

International Sub-Committee on Transport Law

Board member Vincent M. DeOrchis reported on developments following the Singapore Plenary. While the Association was holding its Spring meetings, the Working Group and smaller drafting group of the CMI International Sub-Committee on Transport Law were meeting to revise the current draft based on developments in Singapore, with a view towards getting a draft to UNCITRAL by

the end of the year to comply with the schedule proposed by UNCITRAL Secretary Jernej Sekolec. A meeting in London will follow in September to polish the draft, which will then be submitted to bar and trade associations for comment.

International Maritime Organization

IMO Diplomatic Conference on Convention on Bunker Pollution

A diplomatic conference on the Bunker Pollution Convention was held from March 19 through 23, 2001. The Draft Convention establishes liability for bunker spills from nontank vessels; imposes joint and several liability on shipowners; and requires the registered owner to maintain insurance in a prescribed form, with a right of direct action against the insurer.

Since the March diplomatic conference, the aspect of the Convention which has received the most criticism is the lack of responder immunity, despite the passage of a resolution recommending that States which adopt the Convention also adopt a law on responder immunity.

The threshold limits for application of the Convention were the subject of the most vigorous debate at the conference, with suggestions for a threshold as low as 300 GRT up to a high of 5,000 GRT. The threshold of 1,000 GRT was ultimately adopted.

Protocol to the Athens Convention

Since October 2000, both the Coast Guard and the Association had solicited, without significant success, comments from the cruise industry on the Draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea. Recently, however, President Dorsey received a position paper from Michael Crye, President of the International Council of Cruise Lines, criticizing the proposed Protocol, particularly those provisions relating to strict liability, the reverse burden of proof and direct suits against insurers, and urging the United States delegation to the IMO and the Association not to endorse the proposed Protocol. The International Group of P&I Clubs are also taking notice of the significance of effect of some of the provisions of the proposed Protocol.

President Dorsey will attend the next meeting of the IMO Legal Committee during the week of October 8, 2001 at which the proposed Protocol will be discussed. President Dorsey asked Ann G. Miller of San Francisco, Chair of the Association's Committee on Cruise Lines and Passenger Ships, with the advice of her Committee, to prepare a draft position paper based on the industry reac-

tions she has gathered and historic concerns of the Association, for President Dorsey to send to the Coast Guard after Board approval.

After this Board meeting, at the Board duly resolved by poll that the resulting position paper should be transmitted by President Dorsey to the Coast Guard after the addition of comments on the reverse burden of proof. The position paper conveys the view that the approach taken by the proposed Protocol is fundamentally at odds with current U.S. law and practice and that these deviations are without inherent merit. In particular, the position paper notes that the proposed Protocol provisions on liability, burden of proof and direct action conflict with not only U.S. maritime law but also transportation tort law in most U.S. jurisdictions, and that there has been no showing of a need to change existing law, which balances both carrier and passenger interests, on these issues.

UNESCO Convention on Underwater Cultural Heritage

The Joint International Group of Experts considering the UNESCO Draft Convention met in Paris for two weeks starting on March 27, 2001, but has not completed its work. Among the most contentious subjects were coastal state jurisdiction and the application of the Convention to warships. The next meeting will take place during the week of July 2nd, also in Paris, and will be attended by the Chair of the Association's Study Group, John D. Kimball of New York, who has attended these meetings with the United States delegation.

There have been a few encouraging developments in that there is language in the current draft that would retain the applicability of salvage law to situations in which the salvor has done everything required by other Convention provisions. Nonetheless, the current draft is still in conflict with several of the goals of the Association.

COMMITTEE AND STUDY GROUP REPORTS

Carriage of Goods

Mr. DeOrchis reported on the discussion which took place at the Committee meeting concerning the status of the proposal for a new Carriage of Goods by Sea act, and the delays in its consideration caused by the changes in congressional committees. While Senator Hutchinson no longer chairs the committee that would consider the proposed bill, she has offered to educate her successor about the issues involved.

In connection with the "plain language" revisions to COGSA and other U.S. legislation, including the proposed recodification of Title 46, Professor Tetley

commented at the Committee meeting that legislation which has its origin in a treaty or convention should retain the language drawn from the international agreement as the legislation is in effect an enactment of the international accord, as is the case with COGSA's relation to the Hague Rules.

Marine Financing Committee

Upon the request of the Committee Chair, Sandra L. Knapp, the Board resolved that the Marine Financing Committee is authorized to participate with the National Conference of Commissioners on Uniform State Laws to develop a uniform boat title act either as a separate law or as part of a law of larger scope affecting vehicles and mobile home titling in addition to boats, as well as to continue to monitor, review and comment on related regulatory efforts by the United States Coast Guard. The Board further resolved that the Committee should report to and obtain the approval of the Board of Directors if there are any substantive provisions of such laws or regulations affecting maritime law.

As an additional matter, the Committee's Subcommittee on Coast Guard Documentation, U.S. Citizenship and Related Matters will prepare and submit to the Board proposed comments on a Notice of Proposed Rulemaking concerning 46 C.F.R. Part 67, 66 Federal Register 85 (May 2, 2001), concerning a leasing exemption so that foreign leasing entities can own a vessel so long as it is a bare-boat chartered to a *bona fide* U.S. citizen for two years.

Practice and Procedure

Board member James W. Bartlett, III, Chair of the Committee, reported that the Committee had completed its research confirming the significant disparity in the amount of the security deposits required by the various district courts for vessel arrests and arrangements for substitute custodians, issues which were also discussed at the March 27, 2001 Board meeting.

Mr. Bartlett also reported that he had been advised by Michael Marks Cohen of New York, Chair of the Committee on the CMI, that the American Law Institute is considering a project involving the revision of the venue provisions of the U.S. Judicial Code, but that the scope of the project specifically excludes cases in which jurisdiction is founded on 28 U.S.C. § 1333.

Special Committee on Planning and Arrangements for the Fall 2001 General Meetings

A. Hamilton Whitman, Chair, reported that the arrangements for our Fall meeting in San Diego during the week of October 15 at the Hotel del Coronado are coming along very well. There will be a theme dinner party on the night of

Wednesday, October 17, at Sea World, with a special performance by Shamu, the killer whale, and the availability of water park rides. The meeting's athletic events and competitions will all be on Tuesday, with the exception of the Fun Run, which will be on Thursday morning. Special excursions, including very inviting trips for families to Disneyland and Disney's Adventure Theme Parks and San Diego Wild Animal Park, are available on Tuesday, as well. Committee meetings, including a special meeting of the Committee on Carriage of Goods by Sea for which CLE credit will be offered, will take place on all day on Wednesday and Thursday afternoon. The CLE seminar program will be offered on Thursday morning.

Mr. Whitman urged everyone to make their hotel reservations early in view of the number of rooms which will be available at the meeting rate.

TITLE 46 RECODIFICATION

The U.S. government is considering a major recodification of Title 46 of the United States Code, with the expressed intention of avoiding any modification of existing substantive law. The purpose of the recodification is to modernize language and organize the material. Dennis Bryant, Chair of the Committee on Navigation, Coast Guard and Government Relations, heads an *Ad Hoc* Committee made up of Committee Chairs, including Harold Watson, Chair of the Committee on Maritime Legislation, and the Chairs of several substantive Committees affected by Title 46, to examine proposed revisions for consistency with existing law and report further on the results of this examination. Based on the Coast Guard's advice that this project is moving forward quickly, the Association's comments will be drafted on an expedited basis in order to provide them before the end of the summer.

ABA STUDY ON MULTIJURISDICTIONAL PRACTICE OF LAW

Mr. Bartlett reported that the *Ad Hoc* Committee, which was formed to develop positions on the questions posed by the ABA study, will have its first meeting at this General meeting. The *Ad Hoc* Committee will endeavor to have a draft of its comments by the Association's Fall 2001 meeting in San Diego in view of the need of the ABA committee undertaking this study to draft its recommendations to the ABA within a year.

AMICUS REQUESTS

President Dorsey reported that the Association has been asked to participate as *amicus* in *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F.3d 135 (2d Cir. 2001), in which, on petition for rehearing *en banc*, the Court of Appeals for the Second Circuit has invited briefs from, *inter alia*, maritime law and trade organizations. The sole issue on the petition for rehearing is whether or not the

Second Circuit should overrule *Great Circle Lines v. Matheson & Co.*, 681 F.2d 121 (2d Cir. 1982), in which the court had held that a fixture "subject details" constituted a binding charter. Appellant Guangzhou is asking the court to overrule *Great Circle* on the ground that it is out of step with maritime law in other jurisdictions, particularly that of the United Kingdom, as well as international trade practice, on the issue of whether or not a charter "subject details" is a binding agreement.

Subsequent to the Board meeting, on the recommendation of the Committee on Maritime Arbitration and Mediation, the Board resolved, by poll, to file a brief urging that the Second Circuit revisit *Great Circle* for clarification.

In a second case, after a very lively discussion introduced by the Chair of the Committee on Uniformity of U.S. Maritime Law, James Patrick Cooney of Houston, the Board declined to file an *amicus* brief in *Cammon v. City of New York*, 95 N.Y.2d 583, 721 N.Y.S.2d 579, 2001 AMC 210 (N.Y. 2000). In this suit, New York's highest court allowed a marine construction worker, who was injured on a work platform on navigable waters allegedly because of a surge caused by a passing tug, to assert a claim for negligence and strict liability under New York Labor Law against third parties. The case raises the issue at the center of the current debate among commentators of such stature as Professors Robert Force and David Robertson about the vitality and proper application of *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1917).

While the issue is at the heart of the Association's concerns, in view of the unresolved procedural issues in the case (denial of a motion for summary judgment), the Board resolved that *amicus* support for the petition for *certiorari* was not appropriate at this time. President Dorsey will contact the parties to ask them to keep us advised of the progress of the matter to determine whether or not the Association should participate at a later point in time, particularly if the Supreme Court decides to accept the petition for *certiorari*.

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.

NOAA's "Guidelines for Research, Exploration and Salvage of R.M.S. TITANIC," which are identical to the proposed Agreement rules, have now been

finalized. The only significant difference from earlier versions is that the Guidelines' lack of mandatory force and advisory status has been more clearly stated. Once the agreement with France, Canada and United Kingdom has been concluded, the Guidelines will become mandatory. The current Guidelines have been published in the Federal Register.

JUDGE JOHN R. BROWN ADMIRALTY MOOT COURT COMPETITION

Oral argument, the final aspect of the competition, took place in Newport, Rhode Island, on April 6 and 7, with President Dorsey, Past President Chester D. Hooper, Secretary Burrell and Association members Philip A. Berns and Karen C. Hildebrandt participating as oral argument judges. Many other Association members devoted great attention to their duties on brief judges in this respected competition. At the awards ceremonies that followed oral argument, President Dorsey presented the Best Brief award on behalf of the Association. President Dorsey commented on the extraordinary quality of the oral arguments.

CANADIAN MARITIME LAW ASSOCIATION 50TH ANNIVERSARY

The CMLA will celebrate its fiftieth year with a meeting on June 15 and 16, 2001. The Association will host a reception and present a gift to the CMLA at their meeting, as that Association so graciously did at our Centennial. Our gift will be a banner bearing the same design as the home page on the CMLA website, in a size similar to our own Association banner.

INSURANCE ARRANGEMENTS

Treasurer Bonner reported on the current coverage provided by the Association's CGL and D&O policies to determine whether or not our these policies continue to be adequate to protect the Association, particularly during our resort meetings and in view of the proposals of hotels being considered for future meetings, which include novel provisions for the Association's liability for certain occurrences. At present, the cover appears to be adequate.

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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