

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

Held at the Hotel del Coronado, San Diego, California

on

October 16 and 19, 2001

The meetings were called to order by President William R. Dorsey, III, at 2:35 p.m. on October 16 and at 8:30 a.m. on October 19. In addition to President Dorsey, the following officers were present at both meetings:

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

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The following Board members were present at the October 16 meeting:

Geoffrey F. Birkhead	Robert B. Parrish
James K. Carroll	Alan van Praag
James Patrick Cooney	James F. Whitehead, III
Vincent M. DeOrchis	Robert J. Zapf
John B. Gooch, Jr.	JoAnne Zawitoski
Armand J. Paré	

The following Board members were present on October 19:

Geoffrey F. Birkhead	Alan van Praag
James Patrick Cooney	Mary Elisa Reeves
Vincent M. DeOrchis	James F. Whitehead, III
John B. Gooch, Jr.	Robert J. Zapf
Armand J. Paré	JoAnne Zawitoski
Robert B. Parrish	

At the invitation of President Dorsey, Past President Chester D. Hooper of New York, was present at both meetings, and M. Hamilton Whitman of Baltimore, Chair of the Special Committee on Planning and Arrangements for the 2001 Fall Meeting, was present at the October 16 meeting.

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

Secretary Lizabeth L. Burrell of New York reported on the arrangements for future General Meetings and other administrative matters.

Upon motion duly made and seconded, the minutes of the August 3, 2001 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the August 2001 Board meeting, together with these Minutes, will be published in the Proceedings of the Fall 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 audited reports for the fiscal year which ended on April 30, 2001 as well as the Treasurer's Report for the three months ending on July 31, 2001. Treasurer Bonner

reported on the cash on hand and investments as of the date of the meeting, as well as anticipated expenses for our next fiscal year, including the publication of the Directory, an audit, and travel in connection with many of our on-going projects.

Treasurer Bonner noted that dues collection was not as strong this summer as it was last summer, and the cost of printing and mailing the PROCEEDINGS, the directory and the MLA REPORT have risen steadily. Accordingly, a special committee will look into ways to reduce these costs. We must continue to exercise caution in our expenditures.

Those who have fallen behind on their dues payments continue to be 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 thirteen 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 Associate Lawyer members be advanced to Proctor status. They are:

Susan M. Dorgan of New York    Grady S. Hurley of New York

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.

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

Paul A. Smith of New York    G. Robert Toney of Fort Lauderdale  
Stephen W. Gillen of New York

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

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

Professor Charles L. Black, Jr., of New York	The Honorable William K. Thomas of Cleveland
James H. Dixon of Miami	Thomas F. Ward of Staten Island
Sam L. Levinson of Seattle	Glenn J. Winuk of New York
Donald Rogers of New York	The Honorable Caleb M. Wright of Wilmington

After August 3, 2001 Board meeting, the Association had 3,327 members. As of October 19, 2001, after the changes approved by the Board at its meetings, the total membership was 3,348.

Membership Secretary Rice reported that the directory had been completed at an earlier point in the year, and with more accuracy, than has been the case in the past.

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 the Houston Marine Insurance Seminar on September 24 through 27, 2001, at which he presented a paper on the draft Protocol to the Athens Convention, discussed below.

## **INTERNATIONAL ACTIVITIES**

### **Comité Maritime International**

#### **International Sub-Committee on Transport Law**

Past President Hooper reported on the present draft of the International Sub-Committee's work, and the plan to get a draft to UNCITRAL by the end of the year to comply with the schedule proposed by UNCITRAL Secretary Jernej Sekolec. National maritime law and trade associations were invited to comment on the present draft in preparation for another meeting of the International Sub-Committee in November 2001 in

Madrid, after which the instrument will be given to UNCITRAL by the end of the year. UNCITRAL meetings on the draft will start in April 2002 in New York. Further meetings will follow in Vienna in the Fall of 2002.

NIT League is also participating in the development of the instrument, having sought and obtained observer status by the CMI. NIT League and the World Shipping Council will also be filing position papers.

President Dorsey asked Past President Hooper, together with the other members of the Association's working group—Professor Michael Sturley of Austin (who is also the rapporteur for the International Sub-Committee), Vincent M. DeOrchis of New York, and George F. Chandler of Houston—and the Association's Committee on Carriage of Goods to advise the Board about whether the current Sub-Committee draft generally accords with the Association's COGSA proposal, greatly differs from the COGSA proposal or deals with subjects on which the Association has not previously taken a position.

Past President Hooper reported to the Board on October 16 that the CMI's draft instrument was generally in accord with the Association's draft COGSA proposal. The Association working group's draft position paper was then presented for comment to an open meeting of the Carriage of Goods Committee meeting held on October 17, 2001 during the Fall General Meeting. At the ensuing October 19 meeting, the Board, upon motion duly made and seconded, approved the position paper and directed that it be forwarded to the CMI. A copy of the position paper will be appended to the original of these minutes.

#### General Average

At the CMI's Singapore Plenary, IUMI proposed further revision to the York-Antwerp rules, a proposal opposed by the United States delegation because of the extensive review of this subject conducted at the Sydney meeting. Nonetheless, a working group was formed to study the parameters of such a project and Immediate Past President Howard M. McCormack, Chair of the Average Adjusters Association, will represent the Association at a December 5, 2001 meeting of the working group in London.

#### UNESCO Convention on Underwater Cultural Heritage

The Joint International Group of Experts considering the UNESCO Draft Convention had its fifth meeting in Paris from July 2 through 6,

2001. John D. Kimball of New York, Chair of the Association's Study Group on Underwater Cultural Heritage, and Rapporteur of the CMI's Working Group on Underwater Cultural Heritage, served as a private sector advisor to the U.S. delegation and filed a full report which is available on the Association's website. A summary of the developments at this meeting was included in the minutes of the August 3, 2001 Board meeting.

On September 10, 2001, Patrick Griggs, the President of the CMI, wrote the Director General of UNESCO to advise that he could "see no possibility that the CMI would be able to support the Draft Convention in its current form."

President Dorsey again extended the thanks of the Association to Mr. Kimball, who had devoted so much time and energy to this matter.

### **International Maritime Organization**

#### **Protocol to the Athens Convention**

President Dorsey attended a meeting of the IMO Legal Committee during the week of October 8, 2001, at which the Draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea was the main topic. After receiving recommendations from Ann G. Miller of San Francisco, Chair, with the advice of the Committee on Cruise Lines and Passenger Ships, President Dorsey prepared a position paper based on the industry reaction and historic concerns of the Association. With Board approval by poll after its May 3, 2001 meeting, President Dorsey forwarded the position paper to the Coast Guard.

The paper, which is available on the Association's website, 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.

At the Legal Committee meeting, the International Council of Cruise Lines (ICCL) participated as a nongovernmental organization and

expressed the cruise industry's opposition to several points of the proposed Protocol.

A pleasing result of the October meeting of the Legal Committee was the acceptance of the U.S. delegation's criticism of the reverse burden of proof on the issue of liability for nonshipping incidents and the adoption of the U.S. delegation's definition of a defect in the ship so as to distinguish defects from unseaworthiness.

On the other hand, because the concept of a direct action against insurers has become so common in civil law liability regimes, both domestic and international, in Europe, the provisions for direct actions will be included in the draft sent to the Diplomatic Conference. Indeed, there are provisions for strict liability and direct actions in all recent IMO-generated conventions, like the CLC, HNS and Bunker Pollution Conventions.

*Other Issues treated at IMO Legal Committee Meeting October 8-12, 2001*

The IMO/ILO draft resolutions on repatriation and contract claims of seamen were passed. The work on a convention Offshore Mobile Craft has been taken off the IMO work program. Important work on issues such as places of refuge and suppression of acts of terrorism will take precedence, and the Legal Committee will review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf. The next major projects expected to come out of the IMO will be the draft Convention on Wreck Removal and IOPC Fund limits. The Coast Guard expressed its thanks to the Association for assistance in developing positions on many of the issues raised at the meeting.

The next IMO Legal Committee meeting (84<sup>th</sup> session) will take place from April 22-26, 2002, just before the Association's Spring 2002 meeting.

## **COMMITTEE AND STUDY GROUP REPORTS**

### **American Bar Association Relations**

Past President Hooper reported that at the August 2001 meeting of the ABA, the ABA House of Delegates passed the following resolution concerning unpublished opinions:

Resolved, that the American Bar Association urges the Federal Courts of Appeals uniformly to

- (1) take all necessary steps to make their unpublished decisions available through print or electronic publications, publicly accessible media sites, CD-ROMs, and/or internet websites; and
- (2) permit citation to relevant unpublished opinions.

In accordance with the Board's August 3, 2001 resolution, Past President Hooper, our delegate to the House of Delegates, had voted in favor of the ABA resolution.

### **Fisheries**

Pursuant to the action taken by the Association at its May 4, 2001 General Meeting, President Dorsey forwarded to the Chair and minority leaders of the House and Senate Appropriations Committees the Association's recommendation that the effective date of the section 202(b) of the American Fisheries Act and 46 U.S.C. 12102(c)(4) be extended for at least 18 months to permit development and consideration of amendments to protect the interests of the current holders of preferred ship mortgages on fishing vessels of 100 feet or greater in registered length and the vessel owners. A bill extending the effective date has now been passed.

### **International Law of the Sea**

In view of the change in leadership of the Senate committee dealing with this Convention, President Dorsey forwarded to Senator Joseph Biden, the new chair of the Senate Committee on Foreign Relations, a copy of the Association's December 22, 1995 letter urging the United States to ratify this Convention. Douglas R. Burnett and Lawrence B. Brennan assisted President Dorsey in drafting the forwarding letter volunteering, *inter alia*, to testify in support of the Convention. Given the change in Senate Committee leadership, it is possible that the United States will ratify this important Convention once the immediacy of the current crisis has passed.

### **Marine Ecology**

Matthew A. Marion of South Norwalk, Chair of the Committee, reported that in the view of his Committee, there was no need for the



Association to submit comments to The National Oceanic and Atmospheric Administration (NOAA) concerning its proposal to amend its Natural Resource Damage Assessment (NRDA) regulations under OPA 90 to clarify issues raised in a 1997 federal court decision, as well as to make various technical changes. 66 Fed. Reg. 39464; 66 Fed. Reg. 50919.

### **Marine Finance**

The Committee reported that it will make recommendations to the Board about and prepare a draft letter to the Coast Guard concerning Builder's certificates, certificates of origin and other vessel documentation matters.

### **Practice and Procedure**

Board member and former Committee Chair Robert J. Zapf of Los Angeles reported that the Committee unanimously recommended and would put before the Association a resolution endorsing an amendment to the notice requirements of Admiralty Rule C, as follows:

RESOLVED that the Maritime Law Association of the United States supports an amendment to Rule C(6)(b)(i)(A) and (B) to provide that a person asserting a right of possession or any ownership interest in the vessel must file the statement of such right or interest within ten days of the execution of process or within such time that the court allows, deleting any reference to publication in the context of determining when such statement is to be filed.

The purpose of the proposed amendment is to make sure that forfeiture and admiralty actions are treated differently with respect to when a person with an interest should file a statement of his interest.

### **Young Lawyers**

The Young Lawyers Committee is seeking ways to improve its efficiency in involving new members in the Activities of the Association.

### **Environmental Crimes Special Subcommittee**

Alfred J. Kuffler of Philadelphia, Chair of the Environmental Crimes Subcommittee, reported the Subcommittee's recommendation that the

Association adopt a position paper to serve as a briefing booklet for government officials interested in such issues. Accordingly, the Subcommittee drafted a position paper restating the Association's positions on issues of environmental crimes, *i.e.*, that OPA '90 gives highest priority to prevention and clean-up of spills rather than criminal prosecution; that ordinary negligence should not give rise to criminal liability; that statutes imposing criminal sanctions for damage to the environment should be applied only in situations in which OPA is inapplicable; that legislation should be enacted prohibiting the Department of Justice from seeking waivers of attorney-client and work product privileges as conditions for plea bargains; that there should be a qualified immunity for statements made in Coast Guard and National Transportation Safety Board casualty investigations; and that there should be an evidentiary privilege for self-audit materials.

The Board, after motion duly made and seconded, resolved to adopt the position paper, which may then be forwarded to government officials, as appropriate. A copy of the position paper will be appended to the original of these minutes.

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

A. Hamilton Whitman, Chair, reported that while there had been some cancellations since September 11, the vast majority of those who signed up were attending the Fall meeting in San Diego at the Hotel del Coronado in San Diego. President Dorsey commended Mr. Whitman and the Committee for its extraordinary work.

#### **Special Committee on Planning and Arrangements for the Fall 2003 General Meetings**

President Dorsey reported that while it will be difficult to draw conclusions about the new format adopted for the Fall 2001 General Meeting, we will try to monitor the success of starting resort meetings with a day devoted to all the sports competitions so that it is easier to plan committee meetings and CLE seminars.

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

In view of the difficulties of managing such a project through more than one organization, and at the request of the Study Group, President Dorsey has decommissioned this Study Group.

## **AMICUS REQUESTS**

President Dorsey reported on the two most recent requests for the Association's participation as *amicus curiae*. The first was in *Submersible Systems, Inc. v. Perforadora Central, S.A.* (5<sup>th</sup> Cir.), in which plaintiff sought to attach defendant's rig. The defendant denied the existence of personal jurisdiction, but also sought to avoid the attachment by contending that it could be found within the district. The Court of Appeals held that personal jurisdiction was lacking and that because defendant's rig had left the district, foreign attachment was not proper. The Fifth Circuit also held that the defendant had not waived its right to deny jurisdiction by statements made in attempting to fend off the foreign attachment. After careful consideration and consultation with members of the Practice and Procedure Committee, the President, in consultation with the two Vice Presidents, decided in accordance with Rule 702.4 not to grant the request for *amicus* participation in the petition for *certiorari*, but counsel was asked to notify President Dorsey if *certiorari* is granted so that the Association will be able to consider whether a brief on the merits should be filed.

As of the time of the board meetings, a request for *amicus* participation was pending in *Fish v. Regal*, a Ninth Circuit unpublished opinion involving prejudgment interest in Jones Act cases. After the board meeting, in a vote taken by poll, the Board resolved not to participate in this case.

## **WEBSITE**

President Dorsey reported on the new features of the website, including the ability to post very current items, such as his reports on the effects of September 11, in a timely fashion so as to keep the membership fully advised on matters of urgency or great concern.

## **SERVICE OF REMEMBRANCE AND COMMEMORATION OF THE VICTIMS OF SEPTEMBER 11, 2001**

President Dorsey spoke to the Board about this special ceremony, which was conducted at the opening of the Fall 2001 to honor the victims of the terrorist attacks which occurred on September 11, 2001.

At the October 15 board meeting, President Dorsey also announced that Professor Francesco Berlingieri has arranged for a special mass to be held at Saint Marta's church on the eleventh day of each month for the

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next year in remembrance of those who lost their lives on September 11, 2001. President Dorsey also expressed the thanks of the Association to all those across the world who sent messages of sympathy and support. We are all sincerely grateful for each expression of kindness and solidarity from those abroad.

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There being no further business to come before the Board, the October 15 meeting was adjourned at 4:15 p.m. and the October 19 meeting was adjourned at 9:00 a.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell  
Secretary