

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

Held at the Perdido Beach Resort, Orange Beach, Alabama

on

March 9, 2002

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 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

The following Board members were present:

Geoffrey F. Birkhead

James K. Carroll

James Patrick Cooney

Vincent M. DeOrchis

John B. Gooch, Jr.

Armand J. Paré

Robert B. Parrish

Mary Elisa Reeves

James F. Whitehead, III

JoAnne Zawitoski

President Dorsey commenced the meeting by thanking the members of the Mobile maritime bar for their hospitality to the Board and expressed the Board's gratitude to Second Vice President Rue for his efforts in organizing this 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 October 16 and 19, 2001 meetings of the Board of Directors were unanimously approved and accepted. The minutes of the August and October 2001 Board meetings were published in the PROCEEDINGS of the Fall 2001 General Meeting. The minutes of this meeting will be published in the Spring 2002 PROCEEDINGS.

Upon motions duly made and seconded, the minutes of the October 16 and 19, 2001 Board meetings and Secretary's report were unanimously approved and accepted.

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented Treasurer's Report for the three months ending on October 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 proceeding at about the same level as last year and that we continue to drop members who are in arrears. We must continue to exercise caution in our expenditures.

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

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

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

John H. Hanninen of Bay Village
Neal D. Hobson of New Orleans
David C.G. Kerr of Tampa
Sam Levinson of Seattle
M. Eamonn McGeady of Baltimore

The Honorable Albert Lee Stephens
of Los Angeles
Dewey R. Villareal, Jr. of Tampa
John A. Young of McLean

After the October 19, 2001 Board meeting, the Association had 3,202 members. As of March 9, after the changes approved by the Board at its meetings, the total membership was 3,228.

Membership Secretary Rice reported that the preparation for the next Directory was already well underway, and his expectation that the Directory should be published in the summer.

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/UNCITRAL Working Group

Board member Vincent M. DeOrchis of New York reported that the CMI International Sub-Committee on Transport Law presented a draft to UNCITRAL in December 2001, after a November 2001 meeting in Madrid, at which many last-minute changes were made. UNCITRAL meetings on the draft will start in April 2002 in New York. Further meetings will follow in Vienna in the Fall of 2002.

The Department of State has taken an interest in this subject and had a meeting in Washington D.C. in late January, attended by several senior members of the Department and thirty to forty industry representatives, as well as the Association's working group-Past President Chester D. Hooper, Professor Michael Sturley of Austin (who is also the rapporteur for the International Sub-committee), Mr. DeOrchis, and George F. Chandler of Houston. Our working group was able to provide guidance at the meeting about both the new UNCITRAL proposal as well as the Association's COGSA proposal, and in recognition of the value of that guidance, the Department has appointed the members of our working group as members of the U.S. delegation.

International Working Group on General Average

At the CMI's Singapore Plenary, GUMI 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 CMI Joint International Working Group on Issues in General Average was formed to study the parameters of such a project

and Immediate Past President Howard M. McCormack, current Chair of the Average Adjusters Association, was appointed to represent the Association in that Working Group, which is chaired by CMI Vice President and Association member Francis L. Wiswall, Jr., of Castine.

Immediate Past President McCormack reported that at a December 5, 2001 meeting in London, the Working Group appointed a study group to examine several aspects of the York-Antwerp rules, including the issue of whether or not a general average event should be deemed to have concluded once the vessel gets to a port of safety, and the consequent question of whether or not expenses incurred in a port of refuge would be includable in general average. A copy of Past President McCormack's and Frank Wiswall's reports are appended to the original of these minutes. Further meetings will take place in London on March 18-19, 2002 and in Copenhagen on June 27-28, 2002.

Places of Refuge

In light of the difficulties encountered by the CASTOR, the IMO Legal Committee, at its 83rd Session held in October 2001, gave a mandate to the IMO Secretariat, working in collaboration with the CMI, to undertake a study of the legal issues relating to places of refuge. The Maritime Safety Committee of the IMO recommended the development of a voluntary regime to ameliorate these problems. To assist in this process, the CMI, in consultation with the IMO Secretariat, developed a questionnaire to gather information about the domestic law of CMI member associations on the subject of places of refuge.

The Association's response to this questionnaire, which is available on the website, was drafted by Dennis L. Bryant, Chair of the Association's Committee on Navigation, Coast Guard and Government Regulation, together with Professor Samuel P. Menefee, Chair of the Committee on International Law of the Sea, Matthew A. Marion, Chair of the Committee on Marine Ecology, William T. Storz, Chair of the Committee on Salvage, and Professor David J. Sharpe. President Dorsey thanked the drafters for their able and prompt assistance in this project.

Titulary Members

The Association will propose Michael J. Ryan of New York, a dedicated participant in CMI meetings and events, as a new Titulary Member of the CMI.

International Maritime Organization

President Dorsey reported that after September 11, the IMO passed a resolution calling on the Marine Safety, Legal and Facilitation Committees to evaluate whether any changes should be proposed to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) (SUA Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf. At a February 2002 meeting of the IMO Safety Committee, the Coast Guard, which constitutes the U.S. delegation to that Committee, made a proposal for safety measures, which the Board was able to review. More proposals are expected on this topic.

The next IMO Legal Committee meeting (84th session) will take place from April 22-26, 2002, just before the Association's Spring 2002 meeting. The highest priority items are likely to be the draft Convention on Wreck Removal, places of refuge (as discussed in connection with CMI activities above), the SUA Convention and IOPC Fund limits. The Coast Guard has submitted a white paper on proposed changes to the SUA Convention to the Legal Committee.

The Athens Convention, which is not on the Legal Committee's agenda, is scheduled to go to a Diplomatic Conference in Fall 2002, with the issue of the level at which limitation amounts should be capped to be treated at the Conference. Since the October 2001 meeting of the Legal Committee, however, there have been expressions of concern from P&I clubs about leaving the decision about limitation amounts in the hands of a Diplomatic Conference, at which delegates may not have sufficient commercial knowledge to consider fully the effects of establishing limits so high that insurance cover will not be available. While this issue is not on the Legal Committee's agenda, it is expected that informal discussions concerning this matter will take place at the Committee's 84th Session this April.

COMMITTEE AND STUDY GROUP REPORTS

American Bar Association Relations

Past President James F. Moseley, incoming Chair of this Committee, provided the Board with a written report on the February 2002 meeting of the ABA House of Delegates as the Association's representative, a copy of which is attached to the original of these minutes. Past President Moseley brought to the Board's attention the ABA's consideration of ethical rules

concerning practitioners' use of designations such as "proctor" or "admiralty attorney" or other communication of specialization in maritime law or its more specific practice areas. Under current rules, a "lawyer engaged in admiralty practice many use the designation 'admiralty,' 'proctor in admiralty' or a substantially similar designation."

Marine Financing

The Committee proposed that President Dorsey send a letter to the new Coast Guard Commandant urging the Coast Guard to promulgate regulations:

1. Consolidating of the Builder's Certificate with the Manufacturer's Certificate or Statement of Origin;
2. Requiring a hull identification number for federal documentation of a recreational vessel;
3. Requiring the surrender of certificates of title for a state-titled vessel before it can be federally documented; and
4. Requiring federal preferred mortgagees to file a discharge of a preferred mortgage directly with the National Vessel Documentation Center when the debt secured is satisfied, with special rules for revolving loans.

Upon motion duly made and seconded, the Board authorized President Dorsey to send a letter inquiring about the status of initiatives to promulgate such regulations.

Maritime Criminal Law and Procedure

In response to a request to President Dorsey by a member of the staff of Senator Patrick Leahy, chair of the U.S. Senate Judiciary Committee, Thomas M. Russo, incoming Chair of the Association's Committee, traveled to Washington, D.C. to meet with Senator Leahy's staff to answer questions about the consequences and effects of including various proposed criminal provisions in the Port and Maritime Security Act currently under consideration by Congress.

Practice and Procedure

President Dorsey reported the concern of the Committee, chaired by James W. Bartlett, III, about proposed revisions to Federal Rule of Civil

Procedure 53 that would, *inter alia*, prohibit anyone who had been appointed a master from appearing before the judge who appointed him or her, and create other problems in connection with masters. Because of a tight deadline for comments, Mr. Bartlett sent a letter with the Committee's comments on February 15, 2002 to the Secretary of the Committee on Rules of Practice and Procedure of the Administrative Office of the United States Courts.

Upon motion duly made and seconded, the Board unanimously adopted the letter sent by Mr. Bartlett, and authorized President Dorsey to communicate the Association's endorsement of Mr. Bartlett's letter. A copy of Mr. Bartlett's February 15, 2002 letter and President Dorsey's March 13, 2002 letter are appended to the original of these minutes.

The Assets Forfeiture and Money Laundering Office of the Department of Justice has proposed the creation of a new Rule G as part of the Supplemental Rules for Admiralty and Maritime Claims to deal with forfeiture proceedings. The proposal is to bifurcate as much as possible forfeiture from admiralty procedures in the rules. The Advisory Committee to the Judicial Conference Standing Committee on Civil Rules has asked for the Association's views on the proposed rule, a draft of which was forwarded to the Committee on Practice and Procedure for comment.

That Committee recommended that the concept of separation of forfeiture rules be endorsed, but that the Association take no position on the substance of any rule that might be forthcoming while continuing to participate in the revising process only to comment upon the wording to make sure that there were no unintended modifications of established rules of admiralty practice. Board member and former Committee Chair Robert J. Zapf, who has often met with the Advisory Committee on other matters concerning the Supplemental Rules and their application to both forfeitures and admiralty proceedings, will continue to be involved in developments on Rule G, which will be further treated at the May 2002 meeting of the Committee.

Ad Hoc Committee on Multijurisdictional Practice

As noted in the minutes of the August 3, 2001 Board meeting, in June 2001, President Dorsey, with the Board's approval, had submitted comments to Wayne Positan, Chair of the ABA Commission on Multijurisdictional Practice, urging the Commission to provide a safe harbor for maritime lawyers who cross state lines to provide advice and services to their clients. The letter, which had been drafted and unanimously approved

by the Association's *Ad Hoc* Committee, also headed by Mr. Bartlett, specifically recommended that the profession would best be served by the uniform adoption in every state of the following "safe harbors," applicable whenever a lawyer from a "home" state works in a "host" state as defined in the Commission's April 12, 2001, Inventory of Selected Issues on Multijurisdictional Practice (MJP):

1. Acting in a matter in a host state where the non-resident lawyer is admitted to practice, regardless of whether or not the lawyer resides, or maintains an office, in that state.
2. Preparing for a proceeding or action in the host state in which the lawyer is or expects to be admitted *pro hac vice*.
3. Acting in a matter in the host state in which the lawyer has retained, or has been associated with, local counsel.
4. Acting in the host state on behalf of a client of which the lawyer is an employee or on behalf of the other employees of the client/employer.
5. Acting on behalf of a client in a host state in conducting discovery or investigation in connection with a proceeding (judicial or ADR) in the lawyer's home state.
6. Participating in ADR (arbitration, mediation, etc.) in a host state when the parties have agreed, or are required (*e.g.*, by contract), to conduct the ADR and the matter does not involve exclusively the application of the law of the host state.
7. Acting in a matter in the host state involving a specialized area of substantive law having national or international application.

On November 8, 2001, the Commission issued an interim report, in which it proposed a new model rule that adopts in part the recommendation of the Association concerning a safe harbor, but places that provision in a section dealing with temporary rather than long-term provision of services.

Michael Marks Cohen pointed out to the Practice and Procedure Committee that the proposed model rule did not provide adequate protection to maritime practitioners who might be called upon to advise clients in other states on a long-term basis. The Committee therefore drafted a further letter, recommending an appropriate revision to the model rule.

Upon motion duly made and seconded, the Board authorized the President to sign and send the Committee's proposed letter to the ABA Commission on Multijurisdictional Practice, a copy of which is appended to the original of these minutes.

Ad Hoc Committee on the Recodification of Title 46

Dennis L. Bryant, who chairs the *Ad Hoc* Committee, advised President Dorsey that the Office of Management and Budget has forwarded a draft to federal agencies for comment, but the draft has not yet been released for public comment.

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

Board member JoAnne Zawitoski, Treasurer of the Special Committee, which is chaired by M. Hamilton Whitman, Jr., presented an accounting for the meeting which took place last fall at the Hotel del Coronado in San Diego. President Dorsey commended Ms. Zawitoski for the excellence of this accounting, for which she complimented Committee member Charles E. Schmidt for developing. President Dorsey also took special note of the outstanding efforts of the Special Committee members to make the meeting a success in light of the extraordinary challenges they faced in holding a meeting so soon after the tragic events of September 11, 2001.

President Dorsey commented on the resolution shown by the over three hundred members and guests who attended this meeting only a month after the terrorist attacks, some coming from across the world to show their support.

In view of the special circumstances, the Association has refunded the registration fees of all registrants who did not attend the meeting, whether or not they had requested a refund.

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

Board member Robert B. Parrish, Chair of the Special Committee, reported on the progress of planning for this meeting, which will take place in Bermuda during the last weekend in October 2003, and the efforts to ensure that our hotel arrangements reflect current patterns of attendance at our resort meetings.

Study Group on MLA Publications

In correspondence to President Dorsey, Past President Graydon S. Staring suggested some changes to MLA publications. Past President Staring's letter coincided with the development of concern among the officers about the growing costs of printing and mailing THE MLA REPORT AND PROCEEDINGS, which amounted to about \$94,000 in the Association's last fiscal year, particularly in view of the availability of these documents on the Association's website. President Dorsey has appointed a Study Group to examine these and other issues concerning MLA publications and to make recommendations to the Board.

At the Board meeting, the Study Group's chair, Past President McCormack presented written and oral reports on recommendations developed by the Study Group at its first meeting. These recommendations were: (1) THE MLA REPORT AND PROCEEDINGS should continue to be published in paper form, at least for the foreseeable future, but that members be asked if they wish to opt out of receiving the paper version; (2) all members should also have the option of receiving a notice by e-mail as soon as any of these volumes becomes available on the web, together with a summary or table of contents of the just-published document. In this connection, it was noted that MLA publications are usually available on the website, www.mlaus.org, well before paper versions are in the hands of the membership.

The Board unanimously approved the Study Group's recommendations so that a postcard can be sent to the members, advising them that they could now receive notice of web publication and opt out of receiving a paper version of these documents. Several Board members expressed their hope that many members would forego the paper documents. A copy of Immediate Past President McCormack's written report is appended to the original of these minutes.

The Study Group will continue to meet to consider possible enhancements and other issues relating to MLA publications, including possible cooperation with American Maritime Cases.

AMENDMENT OF BY-LAW

Membership Secretary Rice presented a proposed amendment to Association By-Law 210 concerning the timing of Fall meetings in years ending in even numbers so as to move the date to the first Friday in November.

Upon due notice, and upon motion duly made and seconded, the Board unanimously resolved to amend By-Law 210 to read as follows:

210. REGULAR MEETINGS

Unless the President, with the concurrence of the Board of Directors, shall fix some other day, the annual meeting of the Association shall be held on the first Friday of May, and a Fall meeting shall be held on the first Friday of November of each year. The presence of one hundred (100) members entitled to vote shall constitute a quorum at any meeting of the Association and, except as provided in Article Seven of the Articles of Incorporation, actions shall be taken by a majority of those present and voting.

AMICUS REQUESTS

President Dorsey reported on the three most recent requests for the Association's participation as *amicus curiae* in *Owens v. Sea River Maritime, Inc.*, *Freeze v. Lost Isle*, and *Sprietsma v. Mercury Marine*.

In *Owens v. Sea River* (5th Cir.), which involved the Fair Labor Standards Act, the plaintiff's employer would not be required to pay overtime if plaintiff was considered a seaman for the purposes of that statute. The issue was whether or not the definition of seaman under the Fair Labor Standards Act should be narrower than under the Jones Act or other maritime remedial statutes. In view of the Supreme Court's treatment of prior petitions for *certiorari* on this subject and the By-Law 702.4 requirement that *amicus curiae* briefs are to be only sparingly authorized, the request for *amicus* participation was declined by the President, in consultation with the two Vice Presidents.

Participation was also declined in the same manner in *Freeze v. Lost Isle*, in which the defendant sought *certiorari* to the California Supreme Court on the lower court's decision that plaintiff was a *Sieracki* seaman even though she did not qualify for seaman status under Jones Act. It is very rare for the Association to participate in state court cases.

In *Sprietsma v. Mercury Marine*, however, the United States Supreme Court has already granted *certiorari* to consider whether or not state law claims for failure to install propeller guards on recreational boats are preempted by the Coast Guard's decision not to mandate such equipment in the Federal Boat Safety Act. In fact, this is the Court's second grant of *certiorari* on this issue, having earlier heard argument in *Lewis v. Brunswick Corp.*, which then settled. Upon motion duly made and seconded, the Board unanimously resolved to file an *amicus* brief in this case.

[13239]

MEMBER NEWS

Congratulations were offered to Board member James K. Carroll on his election to the vice chairmanship of the ABA's Torts and Insurance Practice Section.

* * *

There being no further business to come before the Board, the meeting was adjourned at 11:45 a.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary
