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

Held at the Sheridan Society Hill Hotel, Philadelphia, Pennsylvania
on
August 3, 2002
9:00 a.m.

The meeting was called to order by President Raymond P. Hayden at 9:00 a.m. In addition to President Hayden, the following officers were present at both meetings:

Thomas S. Rue, First Vice President
Lizabeth L. Burrell, Second Vice President
Warren J. Marwedel, Secretary
Patrick Bonner, Treasurer
Philip A. Berns, Membership Secretary
William R. Dorsey, III, Immediate Past President

The following Board members were present:

James K. Carroll	Armand J. Parè
Robert G. Clyne	Alan Van Praag
James Patrick Cooney	Mary Elisa Reeves
Robert S. Glenn, Jr.	James F. Whitehead, III
Glenn G. Goodier	Robert J. Zapf
Richard M. Leslie	JoAnne Zawitoski*

* Attended by telephone

At the invitation of President Hayden, Past President James F. Mosley, of Jacksonville, Chair of the American Bar Association Relations Committee, was also present at the meeting.

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the May 2, 2002, meeting of the Board of Directors and the Secretary's report were

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unanimously approved and adopted. The minutes of this meeting will be published in the PROCEEDINGS of the Fall 2002 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, 2002. He reported on the cash on hand and indicated that dues bills have been sent out, and, as of July 31, 2002, 87% has been collected. This is somewhat less than last year, due to a slight decrease in membership. It is anticipated that a balance of about \$60,000.00 will be on hand at the end of the Association's fiscal year, January 31, 2003. The printing of the directory will cost about \$39,000.00. He also reported that the Association successfully underwent a two day audit in July.

Treasurer Bonner commented on the need to build up the Association's reserve fund, to approximately \$300,000.00, to deal with special projects, meetings, and as a buffer for any shortfall at a resort Meeting.

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

MEMBERSHIPS SECRETARY'S REPORT

Membership Secretary Philip A. Berns, of San Francisco, presented twelve applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer Membership were unanimously elected.

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

John W. Sims of New Orleans
Douglas B. Bowring of Massachusetts
Harry J. Gardner of Long Beach
William A. Gillen of Tampa
Theodore C. Robinson of Chicago

Membership Secretary Berns reported that the Association had a total membership of 3,215. Of that number, 1,541 are Proctor Members. The directory should be out in mid to late September.

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Upon motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted. The list of all successful candidates for membership and Mr. Bern's written report are appended to the original of these minutes.

INTERNATIONAL ACTIVITIES

Protocol to the Athens Convention

Immediate Past President William R. Dorsey, III, of Baltimore, reported on the status of the Protocol to the Athens Convention. He indicated there would be a meeting of the IMO Legal Committee this fall that will consider an amendment to the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Fixed Platforms.

There will also be a diplomatic conference on the Athens Convention Protocol that will run concurrently with the IMO Legal Committee meeting. A discussion was held on various aspects of the Protocol, including the two tier system of liability and the definition of "Defects in the Ship." A primary area of concern is who will provide insurance to Shipowners under this Protocol. There is an increased trend to permit direct actions against underwriters and increased amounts of liability. P&I Clubs are concerned about these trends, and the ability of the market to meet the potential value of claims given the higher limits of liability that will be proposed for the Protocol.

U.N. Commission on International Trade Law (UNCITRAL)

President Hayden reported that there was a meeting of the working group in New York, and that there was a great deal of unanimity except for UNCTAD. UNCTAD was critical because of their involvement with Inland Conventions. There will be a further meeting in Vienna in October of 2002, and it will be attended by Professor Michael Sturley, of Austin, and two members of the MLA working group that consists of Vincent M. DeOrchis, of New York, Past President Chester D. Hooper, of New York, and George F. Chandler, of Houston.

Essentially, the working group expects to have its draft done by April of 2003. Past President James Moseley of Jacksonville, indicated that there was a good background article in a past issue of the *American Shipper*. This article will be circulated to the Board.

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Comité Maritime International (CMI) Working Group on General Average

President Hayden reported on the status of the CMI Working Group on General Average. He recently met with Ben Brown, of London, head of the IUMI working group, who indicated that London cargo underwriters are in favor of the recommended changes, hull underwriters in London don't have a position, and average adjusters in London are against the recommended changes. On the U.S. side, AIMU reports that the hull side is not in favor of the changes, questioning who will pay. The cargo side may be in favor.

It is not clear if the working group's suggested changes are going to materialize.

COMMITTEE AND STUDY GROUP REPORTS

Amicus Report In U.S. Supreme Court

Immediate Past President, William R. Dorsey, III, of Baltimore, reported on the background and status of the Association's Amicus Brief filed in the *Rex R. Sprietsma v. Mercury Marine* matter pending in the United States Supreme Court, with oral argument on October 15, 2002.

This is a case, originating in the State Court in Illinois, wherein a Plaintiff is contending that recreational boats should be required to have propeller guards. The MLA filed an Amicus brief on behalf of Mercury Marine, a boat manufacturer, arguing that maritime product liability law, not state common law, governs the case and that the Federal Boat Safety Act pre-empts plaintiff's claim. Some years ago, the U.S. Coast Guard did a study and concluded that not only would it not require propeller guards on recreational boats, but that they could even be dangerous. However, the Solicitor General of the United States has filed an Amicus brief on behalf of the Plaintiff, and the U.S. Coast Guard has signed on to this brief. Essentially, the Solicitor General is arguing that the Coast Guard has not pre-empted this field of law. He argues that the prior Coast Guard report was just a letter, and not a statement or position of pre-emption.

Copies of all briefs, including the MLA brief are on West Law's Judicial Materials site. The MLA brief is on the MLA website.

President Hayden gave special thanks to Joshua S. Force, of New Orleans, who was primarily responsible for drafting the brief. Joshua S.

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Force was assisted by James Patrick Cooney, of Houston, Donald C. Greenman, of Baltimore, and Immediate Past President William R. Dorsey, III, of Baltimore.

American Bar Association Relations Report

Past President James Moseley, of Jacksonville, presented a report of activities of the American Bar Association as they relate to the MLA. ABA Liaison, James Moseley, reported that the ABA House of Delegates considered a number of issues. The D.C. Bar has proposed that anyone admitted to one federal bar should be automatically admitted to any other Federal Court. This issue has been presented before, and is unlikely to pass.

The House of Delegates approved the name change of TIPS to CTIPS, the Court Trial and Insurance Practice Section.

The House of Delegates also passed several ethical guidelines which are not part of the ABA recommended rules of professional conduct. While they are just guidelines, members are urged to check any revisions to their local professional rules of conduct for inclusion of any of these ethical guidelines.

The House of Delegates will also consider Resolution 119, seeking permission to re-examine, for fine tuning, the Foreign Sovereign Immunity Act.

The House of Delegates will also consider recommendations to the model rules regarding multi-jurisdictional practice. MLA delegate, James Moseley, has outlined these recommended changes in his report. Of most interest, are the proposed rules, supported by the majority of the state bar associations, that reaffirm the right of the individual states to regulate the practice of law within its borders. There are exceptions to accommodate multi-jurisdictional practice, such as the use of local counsel and legal service ancillary to a case in your home state. While the model rules recognize the growing multi-jurisdictional nature of the practice of law, the new model rules do not significantly alter present practice. None of the new proposals deal with admiralty practice issues.

Practice and Procedure—American Law Institute (ALI) Foreign Judgment Project

Alan Van Praag, of New York, reported on a meeting of the Practice and Procedures Committee regarding the ALI Project to draft a federal

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foreign judgments statute. The ALI will be inviting the MLA to be an advisor to the ALI on this project, for maritime matters. With consent of the President, Alan Van Praag will be that liaison member.

Committee Chair Assignments

President Raymond P. Hayden reported that in reviewing committee assignments, he and Membership Secretary Philip A. Berns, noted that a number of committees have chairs or vice-chairs who are not Proctor Members, as required by the By-Laws. President Hayden moved, pursuant to By-Law 502, that the Board waive the Proctor requirement for the following members:

Michael E. Unger, Chair of Cruise Lines and Passenger Ships
Lawrence I. Kiern, Vice Chair of Marine Ecology
Thomas M. Russo, Chair of Maritime Criminal Law and Procedure
Barbara D. Burke, Chair of Maritime Legislative Committee
F. William Mahley, Chair of River and Ocean Towing
Mark S. Davis, Vice Chair of Salvage
Lawrence J. Kahn, Vice Chair of the Young Lawyers Committee

The above-mentioned Chairs and Vice-Chairs are asked to immediately file their applications for Proctor Status.

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

Environmental Crimes Committee Meeting in Washington with U.S. Coast Guard, Department of Justice and Environmental Protection Agency, June 10, 2002

President Hayden reported on his attendance at a meeting with the U.S. Coast Guard, Department of Justice and Environmental Protection Agency to discuss the increasing enforcement of criminal statutes against mariners. It was the MLA's position that the government's increasing enforcement of criminal statutes against mariners is causing an industry problem. While the Coast Guard did not necessarily agree with that position, they did acknowledge a perception in the industry of a problem in investigations. The DOJ was of the opinion that there was no problem because they only seek criminal prosecutions in one out of eight hundred cases. There is another group, called the Mariner Retention Working Group, made up of a number of steamship lines, maritime organizations

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and pilot associations. This organization has prepared a position paper which outlines the criminalization of marine acts, and the problem of retaining mariners in the industry in the face of increasing governmental criminal prosecution.

There will be future meetings of this working group and Alfred J. Kuffler, of Philadelphia, will attend on behalf of the MLA.

Project to Increase Membership/Participation

James F. Whitehead, III, of Seattle, reported on a membership/participation project in the Seattle area. James Whitehead and Bruce King, of Seattle, held a meeting of the Seattle MLA membership, to discuss increasing membership and participation of Seattle members in the MLA. The Board discussed various observations of this working group and re-visited, in discussion, the report of George Waddell's long range planning committee issued in 1998. It was observed that both the industry and the legal profession have changed considerably in the past years, and further discussions will be held on the MLA's attempts to adjust to those changes. President Hayden indicated the Officers would discuss these issues further, and suggested that Board members discuss these issues with members in their geographic areas.

President Hayden further reported on how the MLA has attempted to implement some of the study recommendations by broadening the national participation by members, restructuring resort meetings, and increasing available CLE to the Membership. He further indicated his desire to increase participation by other members of the marine community such as towing and marine finance. Strategic planning is an ongoing and very important project of the Board.

Presidential Activities

The Average Adjusters Meeting was held on May 9, 2002 and the CMI Assembly was held in London on May 10, 2002. These meetings were attended by Immediate Past President William R. III, of Baltimore, President Raymond P. Hayden, of New York, First Vice Thomas S. Rue, of Mobile and Past President Howard M. McCormack, of New York.

President Hayden reported that a CMI colloquium will be held in France, June 10 through 13, 2003. One full day will be on Trade Transportation in the Electronic Age and one full day will be on developments on various international conventions.

Calendar

A. On September 15—19, 2002 IUMI will meet in New York. Past President Graydon S. Staring, of San Francisco will attend on behalf of the CMI.

B. On September 23, 2002, President Raymond P. Hayden, of New York will speak at the Houston Marine Insurance Seminar, asking underwriters and brokers their understanding of the new conventions and resulting insurance requirements.

C. The IMO Legal Committee Meeting and Diplomatic Conference will be held in London from October 21 to November 1, 2002. Past President William R. Dorsey, III, of Baltimore, will attend as a private sector advisor to the U.S. delegation.

D. Past President James Moseley, of Jacksonville, will speak at the Pacific Admiralty Law Seminar in San Francisco this October.

E. Patrick Griggs, President of the CMI, will be a speaker at the Healey Lecture in New York on October 31, 2002.

F. The Annual Fall Meeting and Dinner Dance will be held in New York on November 1, 2002.

G. The CMI Colloquium will be held in June, 2003 in France.

H. The CMI Conference will be held in Vancouver in May 30—June 6, 2004.

Future Officer and Board Meetings

A. The Officers will meet at the offices of Hill, Rivkins & Hayden on October 29, 2002.

B. The Association Board of Directors will meet on October 31, 2002, at the Association of the Bar of the City of New York, followed by a luncheon at the New York Yacht Club.

C. The Officers will meet in Washington, D.C. in January, 2003, the exact date to be determined.

D. The Officers and Board will meet in New Orleans on March 17 and 18, 2003.

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E. The 2003 Spring Meeting will be held in New York.

F. The 2003 Fall Meeting will be held in Bermuda at the Fairmont Southampton Princess. Wednesday will be an activities day, followed by committee meetings and seminars on Thursday and Friday. The general meeting will be Saturday morning and the dinner dance will be Saturday evening.

G. The 2005 Fall meeting will be held in Scottsdale at the Fairmont Princess.

There being no further business to come before the Board, the meeting was adjourned at 11:30 a.m.

Respectfully
submitted,

/s/ Warren J.
Marwedel
Secretary