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

Held at the offices of Jones, Walker, Waechter, Poitevent,  
Carrere & Denegre  
of New Orleans  
on  
March 18, 2003  
9:30 a.m.

The meeting was called to order by President Raymond P. Hayden at 9:30 a.m. In addition to President Hayden, the following officers were present:

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. Paré
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

At the invitation of President Hayden, Past President James F. Moseley, of Jacksonville, was also present at the meeting.

**SECRETARY'S REPORT**

On January 15, 2003, the Officers met at the Army Navy Club in Washington, D.C. The Officers discussed the agenda for 2003, including the Association's participation in international and domestic activities. President Hayden outlined his calendar for the year. Treasurer, Pat Bonner, reviewed projected costs for 2003. Membership Secretary Phil Berns reported on the status of revisions to the directory and publication dates.

The Officers recommended a dues increase of \$10.00, which was subsequently passed by the Board of Directors in late January, by electronic vote.



After the meeting, the Officers had lunch with several members of various governmental legal departments that impact the maritime practice. There were legal representatives from Coast Guard, State, Navy, Commerce, and Justice.

Immediate Past President William Dorsey, III, of Baltimore reported on the *Sprietsma v. Mercury Marine* decision. He indicated that the Supreme Court did not address maritime law issues. The Court ruled that although Mercury Marine contended that the case was governed by maritime law, because this argument was not raised below, it was waived.

Upon motion duly made and seconded, the minutes of the October 31, 2002, meeting of the Board of Directors and the Secretary's Report were unanimously approved and accepted. The minutes of this meeting will be published in the Spring 2003 issue of the Proceedings.

#### **TREASURER'S REPORT**

Treasurer Patrick J. Bonner, of New York, presented the Treasurer's Report for the three months ending October 25, 2002. He reported on the cash on hand, and indicated that dues collections were running at about 92%. He indicated there are approximately 69 fewer dues paying members than last year, but the collection rate seems to be a little higher this year. A discussion was held to consider various ways of reducing printing costs. Members will be encouraged to receive their materials electronically, instead of in printed form, to lower costs and to accelerate the delivery of materials.

Upon motion duly made and seconded, the Treasurer's Report was unanimously approved and accepted. A copy of the Treasurer's formal written report will be appended to the original of these minutes.

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

Membership Secretary Philip A. Berns, of San Francisco, presented nine applicants for Associate Lawyer Membership, one application for Judicial Membership, as well as one application to change from Proctor to Judicial Membership. Upon motion duly made and seconded, the candidates were unanimously elected.



Mr. Berns also reported, with regret, the death of the following members:

James M. Leonard of Hunting, New York  
Edward J. Heine, Jr. of New York, New York  
Robert H. Sommer of Montville, New Jersey  
James W. Crabtree of Charlotte, North Carolina  
Robert J. Williams of Garden City, New York  
Stephen D. Johnson, Jr. of Metairie, Louisiana

Mr. Berns reported that the Association had a total membership of 3,157. Of that number, 1,527 are Proctor Members.

Mr. Berns also indicated that the submission date for changes to the membership directory will be April 11, 2003, and that changes for officers, directors, chairs and vice-chairs will be May 16, 2003 .

Upon motion duly made and seconded, the Memberships Secretary's Report was unanimously approved and accepted, including the list of all successful candidates for membership. A copy of Mr. Berns written report will be appended to the original of these minutes.

## **INTERNATIONAL ACTIVITIES**

### **COGSA/UNCITRAL Working Group**

President Raymond P. Hayden reported that the MLA Working Group attended the UNCITRAL London meeting on February 27 and 28, 2003. The Working Group members are Past President Chester D. Hooper of New York, George Chandler of Houston, Professor Robert Sturley of Austin, and Vincent DeOrchis of New York. There will also be a follow up meeting in New York during the last week of March and the first week of April, 2003. The Working Group indicates that issues are being worked out, and that a new draft of the Convention on Transport Law should be available soon.

The MLA Working Group works very closely with the head of the U.S. Delegation, Mary Helen Carlson, of the State Department's Office of Assistant Legal Advisor for Private International Law.

### **Comité Maritime International (CMI) Colloquium**

President Raymond P. Hayden reported that the CMI Bordeaux Colloquium will be June 11, 12 and 13. It is expected that the meeting will



be attended by President Hayden, Past President Howard McCormack, First Vice President Thomas Rue, Second Vice President Elizabeth Burrell, and a representative from the CMI Committee as well as the Electronics and Trade Committee. Wednesday, June 11, 2003, will have meetings on electronic trade and general average. On Thursday, June 12, 2003, there will be meetings on transport law. On Friday, June 13, 2003, there will be meetings on Place of Refuge, marine insurance, international maritime law and the CMI Assembly.

There will be a formal CMI conference in Vancouver, Canada from May 30 through June 5, 2004.

President Hayden reported that Frank Wiswall, a vice-president of the CMI, will be stepping down when his current term expires.

### **Comitè Maritime International (CMI) Working Group on General Average**

President Raymond P. Hayden, of New York, reported for Past President Howard M. McCormack, of New York, on activities as MLA delegate to the CMI Working Group on General Average. The cargo side of the International Union of Marine Insurance (IUMI) is seeking to make changes to reduce cargo's responsibility in the event of a General Average loss. Cargo does not want to be responsible for ships not properly maintained, where cargoes are often more valuable than ships. Past President McCormack has posted a very extensive paper on these issues on the MLA website for everyone's review.

### **COMMITTEE AND STUDY GROUP REPORTS**

#### **Amicus Arguments In U.S. Supreme Court**

Immediate Past President William R. Dorsey, III, of Baltimore, reported on the Supreme Court's decision in *Sprietsma v. Mercury Marine*. He indicated that the Court's 9 to 0 decision in favor of Plaintiff, and against the engine manufacturer, did not consider any maritime law issues. The Court ruled that although the engine manufacturer asserted that maritime law governed the case, because this argument was not raised below, it was waived. He pointed out that no MLA attorneys were involved in the



briefings filed in the lower courts. The decision may be reviewed at *Rex R. Sprietsma v. Mercury Marine*, 537 U.S. 51, 123 S.Ct. 518 (2002).

### **American Bar Association Relations Report**

Past President James F. Moseley, of Jacksonville, presented a report on the activities of the American Bar Association and its upcoming General Meeting in San Francisco in August of this year. Of particular interest is House of Delegates Resolution 302 regarding Senate Bill 413 on cases involving asbestosis. The issue is concerning the threshold test for any claim. The resolution supports the proposition that there must be symptomatic conditions before a claim may be filed. Mr. Moseley will report on this further after the August meeting.

Mr. Moseley also reported that marine arbitrators in Florida must be registered in the State. MLA members doing arbitration should check local and state laws regarding arbitration requirements.

Mr. Moseley further reported on the passing of the ABA's Model Code which covers most situations impacting the practice of admiralty law. Mr. Moseley indicated that this is a model code, and has not yet been adopted by any states. Members are encouraged to monitor their state bar activities to see whether or not any of the model rules are adopted.

### **Fisheries Committee Proposal re Maritime Liens**

President Raymond P. Hayden reported on a memo from David Farrell, Jr., Chair of the Committee on Fisheries regarding maritime liens attaching to fishing permits. Recent case law has held that maritime liens may attach to fishing permits and intangible fishing histories. The MLA Fisheries Committee, is concerned that this unduly complicates fishing vessel financing as well as vessel and permit purchase and sales transactions.

The Fisheries Committee has asked the Board of Directors for authorization to submit statements and testimony to Congress on behalf of the Association opposing this case law and that the central registry system statute should be revised.

A general discussion was held about these issues, and President Hayden asked that the Chair of the Fishing Committee and Chair of the Marine Finance Committee make a presentation to the Board before an Association position is taken on these issues.



## **Resolution**

Upon motion duly made and seconded, the Board passes a resolution thanking Samuel C. Gainsburgh, of New Orleans, and Charles F. Lugenbughl, of New Orleans, for their contributions to the Maritime Law Program at Tulane. The resolution reads:

Be it resolved that the Board of Directors of the Maritime Law Association of the United States expresses its thanks for, and in recognition of, the outstanding contributions of Samuel C. Gainsburgh and Charles F. Lugenbughl to the Maritime Law Program of the Admiralty Law Institute at Tulane, to the practice of maritime law, and The Maritime Law Association

## ***Ad Hoc* Committee Report on Enhancing MLA Membership and Activities**

Second Vice-President Lizabeth L. Burrell, of New York, Chair of the Special *Ad Hoc* Committee working on enhancing MLA membership and member participation in MLA activities, reported on the status of committee's work to date. Ms. Burrell reported that her committee coordinated membership meetings across the country to survey the membership on how the MLA meets the current needs of the membership in light of the changing maritime industry and related practice of law. While the committee is still gathering and analyzing information, there is a preliminary consensus that economic issues, involving time and cost, and social issues, involving two working spouses, have had a profound impact on many bar and legal institutions, not just the MLA. Because of the importance of this committee's work, President Hayden devoted a large amount of the Board's time to listening and commenting on these preliminary observations. The committee is looking at the nature and extent of meetings both in New York and other venues, greater use of technology, CLE activities, non-lawyer membership, ABA relations, and partnering with other organizations. The MLA, through its committee work, deals with issues that are local, national and international, in character. It was recognized that the MLA provides excellent legal publications, very important committee work, and an excellent opportunity for networking.

During the next few months, the committee will complete its analysis of surveys and member input, and make a formal presentation to the Board of Directors outlining issues and recommendations for the Board's consideration.



## **PRESIDENTIAL ACTIVITIES**

President Raymond P. Hayden, of New York, reported on his activities involving the Tulane Law Review Annual Dinner on March 16, 2003, participation in the Tulane Maritime Law Seminar of March 19 - 21, 2003, and acting as a judge in the John Brown moot court competition to be held in Seattle on April 11 - 12, 2003. He will be making a presentation to AIMU on April 28, 2003, as well as attending the CMI Bordeaux Colloquium in Bordeaux, France from June 10 through 13, 2003. He will also make a presentation at the Seali Meeting in June 2003 in Atlanta, Georgia.

### **Calendar**

- A. AIMU Seminar - Monday, April 28, 2003.
- B. IMO Legal Committee - April/May, 2003.
- C. Annual Spring Dinner - Friday, May 2, 2003.
- D. CLE presentation after General Meeting - Friday, May 2, 2003.
- E. Annual Meeting of the Average Adjuster, London - Thursday, May 8, 2003.
- F. The CMI Colloquium Bordeaux, France - June 10 - 13, 2003.
- G. Fall Meeting of the Association at the Fairmont Southampton Princess Hotel in Bermuda - October 29, 2003 to November 1, 2003.
- H. May 30 - June 5, 2004, CMI Conference, Vancouver, Canada.

President Hayden reported that plans are proceeding for the Fall Meeting of The Association at the Fairmont Southampton Princess in Bermuda. This meeting will have two days of CLE, and has been shortened to three days. Members are reminded that the 2003 Annual Fall Meeting in Bermuda will be on Saturday morning, November 1, 2003, and the Dinner Dance will be Saturday night, November 1, 2003.

### **Future Officer and Board Meetings**

- A. The Officers will meet at the offices of Hill, Rivkins & Hayden in New York on Tuesday, April 29, 2003, at 9:30 a.m.

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- B. Board of Directors meeting at the Association of the Bar of the City of New York Thursday, May 1, 2003 at 9:30 a.m.
- C. Spring Meeting of the Association - Friday, May 2, 2003 at 9:30 a.m.
- D. Summer meeting of the Board of Directors in Seattle, Washington on August 1 and 2, 2003.

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

Respectfully submitted,

/s/ Warren J. Marwedel  
Secretary