

[14027]

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

Held at the Hyatt Tampa Bay Hotel  
Tampa, Florida

On  
March 27, 2004  
9:00 a.m.

The March 27, 2004, meeting was called to order by President Raymond P. Hayden at 9:00 a.m. In addition to President Hayden, the following officers were also 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 Patrick Cooney	Armand J. Paré
Robert G. Clyne	John P. Schaffer
Glenn G. Goodier	Robert J. Zapf
Edward F. Lebreton, III	JoAnne Zawitoski
Richard M. Leslie	

At the invitation of President Raymond P. Hayden, Past President James F. Moseley, of Jacksonville, and Boca Raton Arrangements Committee Chair, Robert P. Parrish, of Jacksonville, were also present at the meeting.

**SECRETARY'S REPORT**

Secretary, Warren J. Marwedel, of Chicago, reported that the Law Library Micro-Forum Consortium of Hawaii has agreed to the stipulations proposed by the MLA regarding putting MLA historical documents on their website. The Secretary also reported that the Proceedings and the MLA Report will be combined in one mailing, at a substantial savings to the Association.

Upon motion, duly made and seconded, the minutes of the October 29, 2003, and November 1, 2003, meetings 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 2004 issue of the Proceedings.

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

Treasurer Patrick J. Bonner, of New York, presented the Treasurer's Report. The MLA is about \$6,000.00 ahead of last year, and had about \$20,000.00 in the account at the end of 2003. As of October 27, 2003, there was a total of cash and investments of approximately \$174,880.76.

Mr. Bonner reported that the \$30,000.00, advanced to the Fall 2003 Arrangements Committee, would be repaid; and that the Boca Raton meeting would produce a small profit for the Association.

Mr. Bonner also reported that dues collection was at about 90% so far, and that there was no real decrease in membership resulting from the dues increase.

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 meetings.

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

Membership Secretary Philip A. Berns, of San Francisco, presented twenty-five (25) applicants for associate lawyer membership and one application for reinstatement.

Mr. Berns regretfully reported the deaths of the following MLA members:

Benjamin Thompson, Life Member: Portland, ME  
Robert Mayer, Life Member: Portola Valley, CA  
T. Keith Marshall, III—Associate Member: Charleston, S.C.  
Hon. Ralph W. Nimmons—Judicial Member; Jacksonville, FL  
Samuel C. Gainsburgh—Life Member: New Orleans, LA  
Samuel D. Delich—Proctor; San Francisco, CA  
John B. Sidell—Proctor; San Diego, CA  
Hon. Jacob Mishler—Life Member; New York, NY elected 1964  
Brooks P. Hoyt, Former Member—Tampa, FL



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Nick Healy's wife, Margaret, of New York  
Marshall Keating's wife, Pegeen, of New York

Mr. Berns reported that, as of March 19, 2004, the Association had a total membership of 3,100. Of that number, 1,504 are Proctor members.

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

## **INTERNATIONAL ACTIVITIES**

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

President Hayden reported on the current status of COGSA/UNCITRAL, and the MLA's Working Group activities relating to the current UNCITRAL draft on Carriage of Goods.

Director Jay Paré, of New York, gave a further report on the current UNCITRAL draft on Carriage of Goods, which is available on the UNCITRAL website at [www.uncitral.org](http://www.uncitral.org). Mr. Paré provided the Board with copies of a proposed position paper, a summary of a round table program in London, a summary of the British Maritime Law Association's position on the draft as well as other related materials. Mr. Paré indicated that the main issue was the "scope" section of the draft. He pointed out that the draft covers both common and private carriage, and that the overall impact of the document deals with common or public carriage, and restricts carriers ability to deviate from the instrument.

The Committee on Maritime Arbitration and Mediation prepared an executive summary of its position concerning the "scope" section of the UNCITRAL draft instrument. The committee report summarizes the issue as follows:

The Committee believes that the "scope" section of the current draft Instrument is overbroad inasmuch as the "scope" section provides that the Instrument applies to all "contracts of carriage". This approach is, of course, a major departure from the Harter Act, the Hague Rules and U.S. COGSA which in effect, only apply to bills of lading. In fact, the MLA's redraft of COGSA essentially retained the Harter Act/Hague Rules/COGSA approach (see pages



15-16 of Position Paper). The Instrument, under its currently drafted "scope" section, would *mandatorily* apply to all private as well as common contracts of carriage. Private contracts of carriage have never before been the subject of a mandatory regime. The only escape is from an "exceptions" clause which is still under debate. As outlined below and in the attached Position Paper, it is exceedingly difficult, if not impossible, to draft an "exceptions" clause that is sufficiently encompassing. Hence, the Committee believes the "scope" section should be changed and should be limited to those documents that rightly should be the subject of a mandatory regime, i.e., bills of lading, sea waybills, ocean liner service agreements and other contracts of carriage used in the liner trade.

After considerable discussion, President Hayden indicated he would have a meeting, in New York, with the MLA Working Group and the Arbitration and Mediation Committee, to discuss the issue and report further to the Board at the Spring Meeting in New York.

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

President Raymond P. Hayden did a follow-up report on the formal CMI Plenary session to be held in Vancouver, Canada from May 30 through June 5, 2004. Topics to be discussed include the UNCITRAL draft, the York-Antwerp Rules, pollution and CLC Fund revisions, as well as marine insurance, Place of Refuge and maritime security. There will also be lectures on the Athens and Salvage Conventions.

Information on the Vancouver meeting may be obtained from the CMI website at [www.CMI2004.com](http://www.CMI2004.com). The next IMO meeting will be in London from April 19 to April 23, 2004, and a follow-up meeting from October 25 to October 29, 2004.

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

##### **Officers Meeting—January 2004**

President Hayden reported on the Officers Meeting and lunch with attorneys from the various governmental agencies dealing in maritime matters, which included the U.S. Coast Guard, Department of Justice, NOAA, U.S. Navy and Maritime Administration. This is an annual meeting designed to keep communication channels open with the legal departments of governmental agencies dealing in maritime areas.



### **Fall Meeting 2003—Boca Raton**

Robert B. Parrish, of Jacksonville, Chair of the Boca Raton Arrangements Committee, reported on the outcome of the 2003 Fall Meeting in Boca Raton, Florida. He reported there were 334 adult registrants, and that, after all bills are paid, the \$30,000.00 advanced by the Treasurer will be repaid and that the meeting made a slight profit for the MLA. A copy of Mr. Parrish's report will be attached to the original of these minutes.

President Hayden, and the Board, gave a special thanks to Bob and his committee for their hard work.

### **Fall 2004 Meeting—New Orleans**

Glenn Goodier, of New Orleans, gave a brief outline of the planned 2004 meeting to be held in New Orleans from November 11 to 13, 2004.

A special convention rate has been arranged at the Intercontinental Hotel (\$159.00/night). There will be committee meetings on Thursday and Friday at the conference rooms of local New Orleans maritime law firms. There will be a reception held on Thursday night, from approximately 6:00 p.m. to 8:00 p.m., hosted by the New Orleans Maritime Bar. On Friday, there will be a reception and buffet at the Plimsoll Club. The General Meeting will be held at the Pan American Building on Saturday morning.

### **Fall 2005 Meeting—Scottsdale**

First Vice-President Thomas S. Rue, of Mobile, indicated there would be a preliminary inspection of the Fairmont Princess Hotel in Scottsdale, Arizona in October of this year. The dates set for the meeting are October 31 through November 5, 2005.

Past President James F. Moseley, of Jacksonville, the MLA delegate to the ABA House of Delegates, reported on recent activities of the ABA. In particular, it was noted that the ABA was running at a considerable deficit, apparently not having the cost control measures and financial oversight found in the MLA. Mr. Moseley will be retiring as the MLA delegate to the ABA this spring, and President Hayden thanked him for his service to the Association.

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

Second Vice-President Lizabeth L. Burrell, of New York, Chair of the special *ad hoc* committee on enhancing MLA membership and participation,



further reported on her committee's activities. The third report of the special committee is now on the MLA website, and attached to the original of these minutes.

Part of the report makes recommendations for streamlining the committee structure of the Association. This will involve the consolidation of some committees with related activities. After a general discussion, the President took the reorganization under advisement for implementation later in the year.

Ms. Burrell reported that many of the recommendations of the committee have been implemented already. This includes the elimination of the black tie requirement for the Spring Meeting in New York, shorter meeting schedules, greater use of emails, outlining of committee chair responsibilities, more use of the telephone and video conferencing, etc.

It was recognized that the committees are the back bone of the MLA, and that committee restructuring and committee chair guidelines will further enhance the work of the Organization, while maintaining the professionalism and social networking so important to the Association.

Ms. Burrell will report further to the Board at the Spring Meeting in New York.

#### **National Conference for Commissioners for Uniform State Laws (NCCUSL)**

Director Richard M. Leslie, of Miami, reported on the current status of the ABA review of the proposed study initiated by the National Conference of Commissioners for Uniform State Laws (NCCUSL) to draft a standard law for marine insurance. Mr. Leslie reported that the efforts by NCCUSL to draft such a marine insurance document have been dropped.

#### **Maritime Environmental Crimes Committee Agenda**

The issue of the criminalization of the nations' environmental laws was discussed. The Committee indicated that the various governmental agencies, charged with enforcement of maritime environmental laws, seem unwilling to discuss the impact this has on the maritime community. The Committee is asking if, and how, the MLA could approach Congress regarding these issues. President Hayden indicated he would ask the Committee to make specific recommendations for the Board to consider.

## **PRESIDENTIAL ACTIVITIES**

President Raymond P. Hayden reported on his activities including his speech to the Society of Maritime Arbitrators in December of 2003.

### **Calendar**

- A. IMO Legal Meeting, London—April 19 to 23, 2004
- B. Annual Meeting of the Average Adjuster, London—May 13, 2004
- C. UNCITRAL Working Group Meeting in New York—May 3 to 10, 2004
- D. Spring Meeting of the Association, New York—May 7, 2004
- E. CMI Conference in Vancouver, Canada—May 30 to June 5, 2004
- F. IMO Legal Meeting—October 25 to October 29, 2004
- G. Fall Meeting of the Association, New Orleans—November 11 to 13, 2004

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

- A. Officers Meeting—May 4, 2004 at the offices of Hill, Rivkins & Hayden
- B. The Board of Directors—May 6, 2004 at the Association of the Bar of the City of New York
- C. Summer Officer and Board Meeting—to be determined
- D. Fall Meeting 2004 of Officers and Board in New Orleans.

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

Respectfully submitted,  
Warren J. Marwedel  
Secretary