

[16768]
MINUTES OF THE BOARD OF DIRECTORS MEETING
OF THE MARITIME LAW ASSOCIATION OF
THE UNITED STATES

Held at the offices of Vandeventer Black LLP

Norfolk, Virginia

on

Saturday, March 31, 2012

at

9:00 a.m.

The March 31, 2012 meeting was called to order by President Patrick J. Bonner at 9:00 a.m. In addition to President Bonner, the following officers were also present:

Robert B. Parrish, First Vice President
Robert G. Clyne, Second Vice President
Harold K. Watson, Secretary
William Robert Connor, III, Treasurer
David J. Farrell, Jr., Membership Secretary

The following directors were also present:

Warren J. Marwedel, Immediate Past President

Joshua S. Force	Bradley A. Jackson
James F. Moseley, Jr.	Arthur J. "Skip" Volkle
Dennis Minichello	Thomas J. Muzyka
Francis X. Nolan, III	George W. Nowell
Susan Dorgan	Robert B. Fisher, Jr.
Alexander M. Giles	Edward J. Powers

[16769]

Also present at the invitation of the President were Past Presidents James F. Moseley, Thomas S. Rue, and Lizabeth L. Burrell. In addition, Alan Van Praag participated in the discussion of the Choice of Court Convention by telephone.

SECRETARY'S REPORT

On motion duly made and seconded, the minutes of the December 3, 2011 meeting of the Board of Directors were approved. Mr. Watson reported that the Proceedings from the May 2011 meeting were being printed, and that the next edition of the MLA Report should be finalized in the next few days, and that both publications would be ready for mailing next week.

TREASURER'S REPORT

Mr. Connor reported that the Association's finances remain in very good shape. The dues invoices were delayed in going out by about three weeks while the arrangements necessary to allow payment by credit card were finalized, but approximately \$114,000 in dues payments has been received. Of this amount, approximately \$15,000 was paid by credit card, representing the dues payments of 125 members.

Mr. Connor reported that the Hawaii meeting netted a profit for the Association.

Mr. Connor also reported that Adam Reese, the accountant who has been handling the Association's account, is now with a new firm, Citrin Copperman, and transferring the account to Mr. Reese's new firm should result in continuity of handling and some savings to the Association. Accordingly, Mr. Connor recommended moving the account to Mr. Reese's new firm, and on motion duly made and seconded, the Board approved this recommendation.

On motion duly made and seconded, the Treasurer's report for the second quarter and all expenditures during this period were approved.

[16770]

MEMBERSHIP SECRETARY'S REPORT

Mr. Farrell reported that the following applications for Associate membership have been received:

K. Virginia Aldrich
Washington, D.C.

Jorge Amieva
Basking Ridge, New Jersey

Thomas W. Baker
Cleveland, Ohio

Christina Bolmarcich
Baltimore, Maryland

Guillermo A. Cancio
New Orleans, Louisiana

John C. Cleary
New York, New York

Bess M. Parrish Creswell
Mobile, Alabama

Christopher J. DiCicco
New York, New York

Catherine J. Fiorentino
New York, New York

Warren E. Gluck
New York, New York

Arthur J. Gribbin (Reinstatement)
New York, New York

Melissa A. Hamann
Norfolk, Virginia

[16771]

Edward A. Harley
Seattle, Washington

Parker Harrison (Reinstatement)
New York, New York

Marissa M. Henderson
Norfolk, Virginia

Michael B. Holt
Princeton, New Jersey

Carl A. Irace
East Hampton, New York

Jeremy B. Jones
Seattle, Washington

Gunner Richard Dornonville de la Cour, Jr.
Tampa, Florida

Utsov Mathur
Houston, Texas

John P. Melko
Houston, Texas

Daniel J. Moore
Seattle, Washington

Joseph B. Pipinich
Seattle, Washington

Christian Sauce
New Orleans, Louisiana

Jonathan J.B. Segarra
Mobile, Alabama

[16772]

Charmin B. Shiely
Portland, Oregon

Edgar M. Smith
Savannah, Georgia

Michael E. Streich
Houston, Texas

Lt. Brendan Sullivan
Washington, D.C.

The following application for reinstatement of Non-Lawyer membership has also been received:

George H. Boothby
New York, New York

The following applications for Law Student membership have also been received:

Kendra E. Bray
California Western School of Law, Avalon, California
Joseph C. Devine
Benjamin. N. Cardozo School of Law, New York, New York

Christopher Hamilton
Stetson University College of Law, Gulfport, Florida

Matthew Johnson
University of San Francisco, San Francisco, California

Mr. Farrell also reported that since the Fall meeting, the deaths of the following members has been reported:

David J. Bederman, Academic, 1993, of Atlanta, Georgia
Stephen W. Graffam, Life, 1970, of Pittsburgh, Pennsylvania
John Stewart Harrison, Life, 1958, of Kentfield, California
Fredric Scott London, Proctor, 1974, of Stamford, Connecticut

[16773]

Robert F. Lynch, Life , 1963, of Charlottesville, Virginia
Robert E. Patmont, Life, 1967, of San Anselmo, California
George W. Sullivan, Life, 1953, of New York, New York
Past President Kenneth H. Volk, Life, 1956, of Portsmouth; and
Joan C. Walker, Non-Lawyer, 1984, of Oradell, New Jersey
Florrie L. Wertheimer, Proctor, 1975, of New York, New York

On motion duly made and seconded, these applications for membership were approved. With these new members, the membership of the Association stands at 2,893, consisting of 1,279 Proctor members (of whom 316 are Life members), 1,213 Associate members, 175 Non-Lawyer members (of whom 13 are Life members), 36 Academic members (of whom four are Life members), 44 Law Student members, 127 Judicial members (of whom 15 are Life members), five Honorary members, and 14 Ex Officio members.

Mr. Farrell also presented data regarding membership trends. Membership has declined since the mid-1990's, and the loss of dues will be accentuated in the coming decade as many members who joined the Association in the late 1970's and early 1980's become Life members. Accordingly, active membership recruitment by MLA members of lawyers and non-lawyers in admiralty and related maritime fields is critical for the MLA to continue its role in the years ahead. In this regard, the Board discussed the desirability of reaching out to the maritime plaintiffs' personal injury bar.

Mr. Farrell also presented proposed amendments to two of the by-laws to deal with the dues from Law Student members. Because these members often move and change email addresses, they sometimes do not receive dues invoices. Accordingly, Mr. Farrell proposed amending the By-Laws to provide for a one-time payment of dues by Law Students, the amendments reading as follows (with new language underlined):

208. ELIGIBILITY FOR LAW STUDENT
MEMBERSHIP

Any person who is a resident of the United States, who is enrolled as a full time student in a U.S. school of law, accredited by the American Bar Association, and who has expressed an interest in the practice of admiralty law,

[16774]

shall be eligible for Law Student membership, which shall terminate at the end of the calendar year in which the member graduates or ceases to be a student in good standing at the school. An applicant shall file with the Membership Secretary an application for Law Student membership on a form provided by the Membership Secretary, accompanied by a one-time dues check in an amount set by the Board of Directors. Each application shall be supported in writing by a professor or administrative official at the law school attended by the applicant or by a member of the Association. The letter shall be annexed to the application.

210. DUES

The amount of annual dues of members shall be fixed by the Board of Directors and shall be payable on May 1 of each year, with the exception of Law Student members, whose dues shall be payable as set by the Board of Directors. The following classes of members shall be exempt from the payment of dues:

1. Honorary, Ex-Officio, and Judicial members.
2. Members in good standing who have, as of May in any year, maintained membership in the Association for 40 years. Members so exempted shall be designated as Life Members.

Mr. Farrell also recommended that the application for Proctor status be amended to incorporate the recent decision to encourage Academic members to apply for Proctor status, to allow the Board of Directors the discretion to confer Proctor status without the recommendation of the Committee on Proctor Admissions, and to award full credit for each hour of attendance in continuing legal education. As amended, paragraphs 1 and 3 of Section II of the application form would read as follows:

[16775]

1. Associate Lawyer or Academic membership in good standing in the Association for a period of at least four (4) years and admitted to the practice of law before any of the several courts in the United States. (Upon recommendation of the Committee on Proctor Admissions, or in the Board of Directors' discretion, the Board of Directors may waive the four-year requirement if an applicant is otherwise qualified for Proctor membership).

* * *

3. At least one of the following:

a. evidence of earning a total of 20 credit points in continuing legal education in the field of Admiralty after the admission to the applicable state bar, computed as follows:

i. one ~~half~~ (1/2) point for each hour of attendance at a seminar approved by the Association's Committee on Continuing Legal Education;

ii. one (1) point of reach hour of class attendance at a post-graduate course in Admiralty conducted by an ABA accredited Law School; or

On motion duly made and seconded, these amendments to the By-Laws and the application form were approved.

DISCUSSION ITEMS

Amicus brief request in *Lozman v. City of Riviera Beach*

The Association has been asked to file an amicus brief on the merits in this case involving whether a more-or-less permanently moored houseboat is a vessel. While presumably the Supreme Court will resolve the apparent conflict that currently exists between the circuits, concern was expressed that the Court might not appreciate the potential that this

issue presents across a broad spectrum of maritime law, particularly with regard to marine financing. The Board agreed that the subjective intent of the owner should not be a factor in determining vessel status, and on motion duly made and seconded, approved the filing of an amicus brief making this point and alerting the Court to the potential problems that this issue presents for marine financing. President Bonner asked Messrs. Nolan and Force to get members of the Marine Financing and Practice & Procedure committees to coordinate on the preparation of the brief.

Amicus brief request in *Minton v. ExxonMobil*

President Bonner reported that the Association has received a request for a brief on the merits in this matter, which involves the application of the *Scindia* test. The Association had earlier rejected a request for a brief in support of the petition for certiorari to the Virginia Supreme Court, which has now granted the petition. A vote of the Board on whether to file an amicus brief will be held after the Board members are able to review the briefs in the case the submissions of both parties.

Choice of Court Convention

This convention has been proposed to assist in the enforcement of U.S. judgments abroad. The State Department's proposal envisions a model based on "cooperative federalism," whereby matters governed by state law would be governed by state statutes modeled after the Convention. Some concern was expressed as to whether the Convention is necessary, in that, generally speaking, U.S. judgments are enforced by other countries, and the principal areas where U.S. judgments are refused recognition would also be refused recognition under the Convention. The Board was of the view that we should support the State Department and indicate that we approve of the Convention in principle, but express our opposition to the notion of "cooperative federalism," since if this is incorporated into other regimes in the future, it has the potential for disrupting uniformity.

Clergy Members

A request has been made by a member who has taken Holy Orders and is now working full time in the ministry for a waiver of his

[16777]

dues. Given the fact that these circumstances will arise only very rarely, the Board agreed to grant this dispensation from the payment of dues.

Policy on posting "Best Lawyers" ratings on web site

A number of members have requested that their inclusion in lists of "Best Lawyers," "Superlawyers" and similar lists be included on the Breaking News page of the website. In view of the number of members who are included on such lists, the Board agreed that recognition of this nature should not be posted.

Use of and registering of the Association logo

A recent request for permission to place the Association's logo on a law firm website has highlighted the need to register the logo. Mr. Watson will inquire whether someone in his firm can accomplish this.

Reprinting of MLA publications

Concern has been expressed about the use of Association publications without proper attribution. President Bonner asked Ms. Dorgan and Messrs. Fisher, Giles and Powers to study this issue and report to the Board with recommendations for a policy.

Policy on blasts, mailing lists and labels

President Bonner reiterated the policy regarding the Association providing its mailing list or labels or sending out email blasts. If the organization requesting this provides a discount to MLA members for the program being advertised, the Association will provide this service free of charge, but otherwise will charge for it.

BOARD SUBCOMMITTEE REPORTS

Proctor Status

Mr. Powers reported that all Associate members who have met the waiting period to become Proctors have been reminded that they are eligible to apply for Proctor status. It was noted that this needs to be done on a continuing basis.

[16778]

It was also noted that the Association makes it quite clear that the Proctor designation is solely a designation of a member's status within the Association, and is no way intended to be a certification to third parties.

REPORTS

Foreign lawyers at Spring meeting

President Bonner reported that a number of foreign lawyers will be speaking at various committee meetings in May. This is to be encouraged, as the presence of these lawyers at our meetings is mutually beneficial to both the visiting lawyer and our members.

Rotterdam Rules status

President Bonner reported that a meeting was held to discuss a question that had been raised regarding the potential liability of port authorities under the Rotterdam Rules. This meeting gave Messrs. Hooper and Sturley the opportunity to discuss the status of the Rules with the State Department.

MARAD Forum

Mr. Marwedel reported that because of a change of personnel in the MARAD general counsel's office, and the Association is waiting on MARAD to move forward with the establishment of a MARAD Forum along the lines of the Coast Guard Forum. The Association believes that this is a useful endeavor.

Coast Guard Forum

Mr. Marwedel reported that the Coast Guard is currently working on draft regulations to govern one person boards of investigations. The Coast Guard has indicated that once it has completed this, the Association will be asked for comments.

CMI Meeting Spring 2016

President Bonner reported that he has asked Vincent Foley to serve as the MLA's representative in coordinating the meeting of the CMI that will be held in New York in the spring of 2016.

Summer Board meeting

Mr. Parrish reported that the summer Board meeting will be held in Boston. The majority of the Board was of the view that August 4 was the best date for this meeting.

Fall 2012

Mr. Clyne reported that the Cipriani Hotel on Wall St. would be a superior venue for the dinner dance to be held in conjunction with the Fall Meeting. The majority of the Board agreed that we should look into what the cost would be at the Cipriani and consider what the attendance would be there.

Fall 2013

Mr. Parrish reported that plans are going forward for the Fall 2013 meeting to be held in Puerto Rico. El Conquistador is the likely venue, and Mr. Parrish and Mr Radcliffe, chair of the meeting have visited the site. The meeting will be a joint meeting with the Instituto Iberoamericano de Derecho Marítimo, and Mr. Parrish is working with William Graffam, president of the IIDM, to coordinate this.

BIMCO

Ms. Burrell reported that Keith Heard's efforts to preserve New York as a named alternate arbitration venue in the new BIMCO sales form have been successful. The form will only be available on the BIMCO website, and the blank for the place of arbitration will have "drop down" options, one of which will be New York. This will be the subject of further discussions at the BIMCO meeting in Singapore in April 2012.

[16780]

On the other hand, Mr. Nolan reported that he understood that the new BIMCO shipbuilding form eliminates New York as an arbitration venue. This will be explored further, but the Board discussed whether the Association should develop its own set of forms for charters, shipbuilding contracts, etc.

Salvage Convention

President Bonner reported that the Salvage Committee has withdrawn its request that the Association vote on the proposed amendments to the Salvage Convention.

Leases as financing documents

Mr. Nolan reported that a draft statute prepared for the Liberian Maritime Law to provide for the treatment of certain demise charters as preferred mortgages had been modified to adapt it for passage by the Marshall Islands and transmitted to International Registries for consideration and he is hopeful that legislation will be forthcoming within the year.

There being no further business to be considered by the Board, the meeting was adjourned.

Respectfully submitted,

Harold K. Watson, Secretary