|  |
| --- |
|  |
| **Board Minutes, May 2, 2002** |
| **Source:** MLA **Date:** May 3, 2002  **MINUTES OF THE BOARD OF DIRECTORS MEETING OF**  **THE MARITIME LAW ASSOCIATION OF THE UNITED STATES**    Held at the Association of the Bar of the City of New York  on  May 2, 2002    The meeting was called to order by President William R. Dorsey, III, at 9:30 a.m. In addition to President Dorsey, the following officers were present at the meeting:    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  Mary Elisa Reeves  Alan van Praag  James F. Whitehead, III  JoAnne Zawitoski  Robert J. Zapf  At the invitation of President Dorsey, James W. Bartlett, III, of Baltimore, Chair of the Committee on Practice and Procedure, and Joshua S. Force of New Orleans, Chair of the Young Lawyers Committee, were also present at the 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 March 9,2002 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the March 2002 Board meeting and this meeting will be published in the Proceedings of the Spring 2002 General Meeting.    **TREASURER'S REPORT**    Treasurer Patrick J. Bonner of New York presented Treasurer's Report for the three months ending on January 31, 2002. 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. Insurance costs have gone up. The Association is still spending somewhat more than it is bringing in.  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.    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 twelve applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.    The Proctor Admissions Committee recommended that seven Associate Lawyer members be advanced to Proctor status. They are:    Lawrence Arcell of New Orleans  F. Nash Bilisoly of Norfolk  Jeffrey B. Carra of Long Beach  Marc Ercolin of Fort Lauderdale  John E. Kawczynski of South Amboy  Paul L. Lees of Gloucester  Louise S. Livingston of San Francisco  Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved and the seven Associate Lawyer members were granted Proctor status.    The Membership Secretary reported that three applicants had been recommended for Non-Lawyer membership. Those recommendations are:    John Ring of New York  David Hornish of New York  Shawn Crawley of Long Grove    Upon motion duly made and seconded, the three Non-Lawyer applicants were unanimously elected to Non-Lawyer membership.    Membership Secretary Rice also reported, with regret, the death of the following members:    James R. Campbell of Mount Laurel  Brunswick G. Deutsch of New Orleans  David I. Gilchrist of Southampton  The Honorable Nauman S. Scott of Alexandria  Douglas C. Wynn of Greenville    After March 9, 2002 Board meeting, the Association had 3,215 members. As of May 3, 2002, after the changes approved by the Board at its meeting, the total membership was 3,237.    Membership Secretary Rice reported that the next directory will be in the mail by early July, a much earlier point in the year than has been the case within memory. President Dorsey thanked Membership Secretary Rice for his outstanding efforts in making the directory more accurate and more quickly available than ever before.    Mr. Rice also reported that certificates of appreciation will be given to members who have been in the Association for fifty years or more.    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/UNCITRALWorking Group*    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. Board member Vincent M. DeOrchis of New York reported that UNCITRAL meetings on the draft took place on April 15 through 26, 2002 in New York. Further meetings will follow in Vienna on September 16 through 20, 2002.    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-attended this meeting as members of the U.S. delegation, which also included members of the Department of State and others.    The draft proposal was reviewed and was found to be widely acceptable, although fine-tuning will be necessary. It is expected that the proposed convention will be finalized within three or four years. Mr. DeOrchis suggested that the Carriage of Goods Committee immediately undertake a close study of the present draft in order to recommend positions that should be taken on novel issues raised by the UNCITRAL draft convention. The current draft is available on UNCITRAL's website,[www.uncitral.org](http://www.mlaus.org/www.uncitral.org).    *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 on a March 18-19, 2002 meeting of a study group appointed by the International Working Group at its December 2001 meeting at which the discussion centered on 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 appropriately included in general average. A further meeting will take place in Copenhagen on June 27-28, 2002.    **International Maritime Organization**    *Security Matters and the SUA Convention*    President Dorsey and First Vice President Ray Hayden attended the 84th session of the IMO Legal Committee, which took place in London during the last week of April 2002. President Dorsey reported that at its November 2001 meeting, which took place shortly after September 11, the IMO Assembly adopted resolution A.924(22), Review of Measures and Procedures to Prevent Acts of Terrorism which Threaten the Security of Passengers and Crews and the Safety of Ships. The resolution called on the Marine Safety, Legal and Facilitation Committees to evaluate on a high priority basis present legal and technical measures to prevent and suppress acts of terrorism against shipping, including possible amendments 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. One indication of the importance being accorded this work is the fact that IMO Secretary-General Mr. William A. O'Neill attended all sessions on the subject at the Legal Committee's 84thsession.    The U.S. delegation to the Legal Committee submitted a proposal for amending the SUA Convention, which included, *inter alia*, expanding the range of violent acts that should be covered and adding new offenses, such as releasing harmful substances that might cause injury or death, using vessels to transport harmful substances or weapons, or using a ship or her cargo as a weapon, and provisions concerning extradition. The United States offered to lead a correspondence group to draft such amendments. Such a correspondence group has been formed and given terms of reference. It will be led by the U.S. delegation. The correspondence group will report at the October 2002 meeting of the Legal Committee. Because of the high priority of this project, it is hoped that the amendments can be drafted within a year so that the Legal Committee can recommend to the IMO Assembly that a Diplomatic Conference be convened to amend the SUA Convention. The IMO's Maritime Safety Committee will hold its 75th session on May 15 through 24, 2002, with maritime security as the focus of its agenda.    *Transparency of Ownership*    The IMO's Maritime Safety Committee sought the advice of the Legal Committee on how it might be possible to define "ownership" and "control" so as to form a clearer picture of the actual ownership of vessels seeking port entry. The Legal Committee recommended that, for security purposes, the Maritime Safety committee concentrate instead on who actually controls the vessel, by asking three relevant questions:    (1) who appoints the crew;  (2) who fixes the use of the ship; and  (3) who signs charter parties on behalf of the owner.    *Wreck Removal*    The Legal Committee session included discussion of the draft convention on wreck removal, particularly financial responsibility requirements, insurance and direct actions, and the definition of "hazard" as being both a danger to the coastline or environment and a danger to navigation. There was considerable discussion of the relationship of the Wreck Convention and UNCLOS, an issue which will require close study.    *IOPC Fund*    The Legal Committee approved a draft Protocol to the 1992 Fund Convention establishing a supplementary fund which would provide an optional third tier of compensation over and above those provided by the 1992 CLC Convention and the 1992 Fund Convention. The new fund will be funded by contributions from oil receivers in the state parties to the protocol. The protocol has good chances of success at a diplomatic conference which might be convened early next year.    *HNS Convention*    So far, only Russia and Angola have signed.    *Places of Refuge*    In light of the difficulties encountered by the Castor, the IMO Assembly, working in collaboration with the CMI, gave a mandate to the IMO Secretariat 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 Legal Committee discussed places of refuge and the CMI report on this subject, particularly the balancing of a state's duty to render assistance to vessels in distress with a state's right to protect its coastlines and control entry to its ports. Some states are concerned about the possibility of being liable for their actions, for example, if entry were refused and as a result of that refusal, another state's coastline was fouled. The Legal Committee expects to review any guidelines on this subject prepared by the Maritime Safety Committee.    *Code of Practice for Investigating Acts of Piracy*    Brazil submitted a proposed amendment to the IMO code of practice for investigating acts of piracy and armed robbery for ships at sea so as to limit piracy to acts performed at sea, rather than in a port. Discussion of the proposed amendment showed that the Legal Committee was divided on this issue. The Maritime Safety Committee will also consider this issue at its next session.    *Athens Convention*    The Athens Convention was not on the Legal Committee's agenda but is scheduled to go to a Diplomatic Conference in Fall 2002. It was the subject of an informal luncheon discussion chaired by the leader of the correspondence group. The discussion was prompted by a letter from the international P&I clubs expressing concern that coverage at the level of anticipated Protocol caps might not be available. Since the October 2001 meeting of the Legal Committee, there have been expressions of concern from P&I clubs about leaving the decision on 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 high limits. At present, 350,000 SDR's is being discussed as a possible limit on strict liability, and 500,000 SDR's as an overall limit to be covered by insurance.    **Proposed Convention on Forum Selection**    Board member Alan van Praag reported that in an attempt to salvage something from the stalled draft convention on reciprocal enforcement of money judgments, the Hague Convention is trying to find agreement on a forum selection clause convention. Jeffrey Kovar of the U.S. State Department has requested the Association's views on such a convention, and a group involved in this subject, including Board member Alan van Praag, CMI committee chair Michael Marks Cohen, and the Association's UNCITRAL working group, will make recommendations to the Board what formal response should be made.    **UNESCO Convention on Underwater Cultural Heritage**    The UNESCO Convention on Underwater Cultural Heritage was passed. Because there will probably be a sufficient number of signatories to bring the Convention into force, the Association's Study Group will remain in place to monitor developments. It is not expected that the United States will sign the Convention.    **COMMITTEE AND STUDY GROUP REPORTS**    **Marine Financing**    Acting on the Board's resolution at its March 2002 meeting approving the Committee's proposal, on March 18, 2002, President Dorsey sent a letter to the 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.    President Dorsey reported that the Coast Guard had replied to his letter by noting that these items could not be given consideration at present, the current focus of the Coast Guard being national security issues.    **Practice and Procedure**    Chair James W. Bartlett, III, of Baltimore reported that 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 Supplemental 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 unanimously recommended that the Board adopt and recommend to the Association a resolution (1) endorsing the formulation of a Supplemental Rule G dealing exclusively with civil forfeiture procedures, (2) changing the title of the Supplemental Rules to reflect that they were applicable to forfeiture as well as maritime claims, (3) providing that Supplemental Rule G apply only to forfeiture rather than maritime proceedings, and (4) recommending that conforming amendments be made to Supplemental Rules A through F to implement the foregoing objectives. Upon motion duly made and seconded, the Board approved the resolution, the text of which appears in the transcript of the May 3, 2002 General meeting, published in the same volume of the Proceedings as these minutes.    **Young Lawyers**    Chair Joshua Force reported that the Committee was considering amendments to its membership guidelines and mission statement.    ***Ad Hoc* Committee on Multijurisdictional Practice**    As noted in the minutes of the August 3, 2001 and March 9, 2002 Board meetings, 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. 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. Despite further a further letter signed by President Dorsey (a copy of which was appended to the original March 9, 2002 Board minutes) authorized by the Board, urging the Commission to give longer term protection to maritime and other federal law practitioners, it appears that the Commission will maintain the safe harbor provision as its stands.    **Special Committee on Planning and Arrangements for the Fall 2003 General Meetings**    First Vice President Raymond P. Hayden reported that the meeting will take place at the Southampton Princess from Wednesday, October 29th, through Saturday, November 1st, 2003. The meeting will be shorter, running from Thursday through Saturday, with the General Meeting and dinner dance taking place on Saturday rather than Friday of the meeting week. It is expected that there will be increased opportunities for CLE credit and that many of the speakers will be those who use the services of maritime attorneys.    **Study Group on MLA Publications**    As noted in the minutes of the Board's March 9, 2002 meeting, the Board approved the Study Group's recommendations that in order to save substantial printing and mailing costs, members be given the options of (1) forgoing paper copies of The MLA Report and Proceedings, and (2) 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. Accordingly, in his Spring 2002 Newsletter, President Dorsey included a postcard advising them that they could now receive notice of web publication and opt out of receiving a paper version of these documents. During his report, Treasurer Bonner reported that about 250 members had already decided they didn't want paper copies.    ***AMICUS* REQUESTS**    Joshua S. Force of New Orleans, Chair of the Young Lawyers Committee, reported on the *Sprietsma v. Mercury Marine*, in which the Board, at its March 2002 meeting, authorized the filing of an *amicus* brief after United States Supreme Court 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. The Association's brief is being authored by Mr. Force, together with Board member James Patrick Cooney, outgoing Chair of the Committee on Uniformity of U.S. Maritime Law, and Donald Greenman, outgoing Chair of the Committee on Recreational Boating. Mr. Force reported on the anticipated structure of the brief, which is due on May 20.    **REVISIONS TO UCC ARTICLE 7**    President Dorsey reported that revisions were being considered to Article 7 of the Uniform Commercial Code which applies to bills of lading, *inter alia*, and that he had therefore sought the comments of George Chandler, as well as the Committees on Carriage of Goods, Electronic Communications and Commerce, and Marine Finance. Mr. Chandler reported that the changes will not negatively affect maritime interests. A copy of Mr. Chandler's report is available on the Association's website.    **JUDGE JOHN R. BROWN MOOT COURT COMPETITION**    President Dorsey reported on his participation as an oral argument judge in the Judge John Brown Moot Court Competition in New Orleans on March 21 and 22, 2002, and the awarding of the Association's Best Brief award. Two teams-the University of Richmond and the University of Houston tied for this award.    \* \* \*    President Dorsey expressed the Association's thanks to retiring Board members Geoffrey F. Birkhead, Vincent M. DeOrchis, John B. Gooch, Jr. and Robert B. Parrish. In turn, First Vice President Hayden expressed the Association's thanks to Past President Dorsey, whose term was concluding, for his leadership and extraordinary efforts on behalf of the Association.    \* \* \*    There being no further business to come before the Board, the meeting was adjourned at 12:00 noon.    Respectfully submitted,    /s/ Lizabeth L. Burrell  Secretary |