

Houston Maritime Arbitrators Association Newsletter

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Fall 2004

HMAA ANNUAL MEETING

The Annual Meeting of HMAA Members, as well as the organizational meeting of the Board of Directors, was held at The Houston City Club on Thursday, July 15, 2004. There was a quorum present and a number of proxies for voting.

The Officers and Directors present were: Chairman & Director – George F. Chandler III, President, Vice Chairman & Director – Edward W. Knutsen, Director & VP-Marketing – George E. McCarthy III, Director & Treasurer – Ed Bluestein, and Director & Secretary – Robert Ryniker. The VP-Membership, Tom Donovan, was unable to be present due to recent cardiac bypass surgery. The membership wished Tom a speedy recovery, and the President thanked Tom for his good work this year. Our VP-At Large, Gus Elmer, was unable to be with us due to the birth of a granddaughter in New Jersey. The membership congratulated Gus & Ann Elmer, and the President thanked Gus for his good work during the past year.

On the ballot at the meeting was a YES or NO vote on a proposed amendment to the HMAA Bylaws which, if approved by the membership, would limit the terms of Directors of HMAA to three terms. After lengthy discussion, the counting of the ballots resulted in unanimous passage of this amendment to the Bylaws. The President reminded members that it is not too early to start thinking about orderly succession, as this amendment will mean at least one Director will be ineligible for reelection in 2005, and at least two Directors will be ineligible for reelection in 2006

The terms of three Directors (two year terms) expired at this meeting (George Chandler, Bob Ryniker, and Ed Knutsen). The President asked Dave Scruton, Chairman of the Nominating Committee to give his report. This was done, and the floor was opened to any nominations from the floor. The nominations were closed,

and the election conducted. The counting of the ballots resulted in the three incumbent Directors being unanimously reelected for two year terms each. The President thanked the Chairman and members of the nominating committee for their efforts.

The Minutes of the last annual meeting were approved as previously submitted

The Treasurer gave his report and a motion was made, seconded, and passed to accept the Treasurer's report as submitted. The President thanked the Secretary and the Treasurer for their efforts this past year

The Marketing Committee chairman, George McCarthy, then gave his report (noted elsewhere in this Newsletter), and a good deal of discussion followed on the subject of Marketing HMAA. Following the discussion, the President thanked the Chairman and members of the Marketing Committee for their ongoing efforts in behalf of HMAA

A motion was made, seconded, and passed that the Annual Meeting be adjourned

Following adjournment of the Annual Meeting, the five Directors of HMAA met and elected the following officers for the Year 2004-until the annual meeting in 2005

Chairman & Secretary: Robert Ryniker
Vice Chairman & President: Edward W. Knutsen
Treasurer: Ed Bluestein
Vice President-Marketing: George E. McCarthy III
Vice President-Membership: Thomas J. Donovan
Vice President-At Large: Gus Elmer

Following the above election of Officers, the meeting of the Board of Directors adjourned

TREASURERS ANNUAL REPORT

This report covers the 12 month period beginning June 1, 2003 and ending May 31, 2004.

Beginning Cash Balance \$11,654.43
Income \$4,505.00
Expenses 1,251.18
Ending Cash Balance \$14,908.25
Income sources were from annual dues.
Expenses were for the 2003 annual meeting costs, registration for ASBA/BIMCO conference, and two Board of Directors lunch meetings. All bills are paid and there are no unusual expenses anticipated.
Respectfully submitted,
Ed Bluestein
Treasurer

MARKETING H.M.A.A.

At the Houston Maritime Arbitrators Association annual meeting held on July 15, 2004 at The Houston City Club, our Vice President of Marketing (and Director), George E. McCarthy III, reported to the membership on behalf of the Marketing Committee.

George mentioned that the primary purpose of the Marketing Committee is to promote HMAA to the industry. As he sees it, the best manner to accomplish same is to expand and diversify membership and our client base

McCarthy went on to propose some specific marketing methods to the HMAA members and the Board of Directors. He said he is maintaining a computer-based target marketing listing and status. This listing is very extensive and includes companies not just in Houston, but everywhere in the maritime community. George also stated the marketing committee intends to contribute to the HMAA newsletter with the intention of gaining more membership input to this vital task.

George then went on to inform those members in attendance on marketing results to date. The marketing committee developed and instituted a very reasonable, attractive HMAA letterhead and envelopes to be utilized for this purpose. This was accomplished at very little cost utilizing in-house color letterhead and printing done at the offices of George's firm, Cormac Maritime. Utilizing this material, and other on-hand data, a mailing was sent out to fifty-nine firms on the computer-based target marketing list. Through the courtesy of one of HMAA members, handouts regarding HMAA were distributed at a conference held in London.

An evening tour of the Port of Houston aboard M/V SAM HOUSTON was arranged and carried out. This evening was well attended by both marketing potential individuals and officers and directors of HMAA. Subsequent follow-up letters with brochures/HMAA details & photographs were sent out to SAM HOUSTON boat ride guests.





McCarthy then proposed certain specific marketing venues for consideration/discussion with the membership in attendance. These included, posting of SAM HOUSTON photos on our HMAA website, additional introductory letters with brochures etc. to be sent out to a broader target audience, a web link to Cormac Maritime LLC new demurrage clause/arbitration database, a targeted advertising campaign, handouts at the next ASBA conference in Miami in November 2004, and an additional HMAA evening within the next six to nine months

All the above engendered a detailed discussion on this essential topic with most members in attendance participating. Many excellent ideas were proposed and discussed. This opportunity is taken, once again, to thank George McCarthy and the marketing committee for their past and ongoing efforts, and to remind our membership this is a topic which requires all of our efforts and input as we go forward

H.M.A.A. TRAINING SESSION

Unfortunately, due to problems involving logistics and schedule conflicts, it will be necessary to postpone the Arbitrators' training workshop which we intended to hold on October 26th and 27th. If you have previously indicated your intention to attend this workshop, we will retain your interest in our files and advise you as soon as it is practical to reschedule the workshop. If you have not previously advised



our President, Ed Knutsen, of your interest in attending the next workshop, it is requested that you email Ed of your potential interest (subject to scheduling) as soon as possible at: ed.knutsen@earthlink.net Thanks for your understanding, and we will advise all concerned directly when we are able to reschedule the workshop

LAW COMMITTEE ON MARITIME ARBITRATION FALL 2004

Editors: William A. Durham,
John M. Elsley,
William H. Seele

RECENT COURT DECISIONS ON ARBITRATION

In an attempt to keep Members of the Houston Maritime Arbitration Association advised of current cases, the following is a summary of recent cases from the Federal Courts which may be of interest and helpful to the arbitration process. These are merely summaries and do not offer any opinion as to their applicability to any case or arbitration. A free source to read the full decision is provided after the summary for your ready convenience.

- *Washington Mutual Finance Group, LLC v. Bailey*, No. 02-60794 (5th Cir. 2004) - decided March 19, 2004

The issue before the Court was the enforceability of a consumer arbitration agreement. The consumer alleged, because they were illiterate and did not have the arbitration agreement explained to them that it was "procedurally unconscionable" and unenforceable. Relying upon Mississippi law, the Court of Appeals held that there was an obligation to read the contract or "have it read to them" and held the agreement enforceable. The Court went on to again recognize, as to the co-party who had not signed the agreement, that they were bound by the agreement and the fact that numerous Federal Circuit Courts recognize the enforceability of an arbitration agreement to non-signatories to the arbitration agreement. See the full opinion at www.ca5.uscourts.gov.

- *Karah Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi*

Negra, No. 02-20042 and 03-20602 (5th Cir. 2004) - decided March 23, 2004

This is an opinion confirming an arbitration originating in Switzerland between a company owned by the government of Indonesia and a Cayman Islands company. The discussion relates to the enforcement of an arbitration award. The Court, affirming the enforcement, recognizes the United States Supreme Court mandate for the enforceability of foreign international arbitration awards for the benefit of orderliness and predictability. The Court quoted Supreme Court language saying, "[a] contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is. . .an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction. . . Such a provision obviates the danger that a dispute under the agreement might be submitted to a forum hostile to the interests of one of the parties or unfamiliar with the problem area involved." The full case can be reviewed at www.ca5.uscourts.gov.

- *Prescott v. Northlake Christian School*, No. 03-30201 (5th Cir. 2004) - decided May 4, 2004

This is a case in which the Court dealt with the issue of when the contract refers to arbitration rules whether it is incorporating the law of the selected forum or merely the procedures of that forum. Additions to the arbitration agreement indicated that the parties may have intended judicial review beyond the normal narrow range of the Federal Arbitration Act or the referenced Montana arbitration provisions. The Court held that when applicable, the Federal Arbitration Act does not bar parties from structuring an arbitration by means of their contractual agreement nor does it preempt state laws as it regards the arbitration. This case deals with the scope and the applicable law, which may be required by a panel to determine to use in an arbitration decision. The full opinion can be accessed at www.ca5.uscourts.gov.

- *Waste Management, Inc. v. Residuos Industriales Multiquim, S.A. de C.V.*, No. 03-21119 (5th Cir. 2004) - decided June 11, 2004

This is a case where the Court of Appeals dealt with the issue of staying a action involving a parent company of the company which had agreed to arbitration. The Court of Appeals held that there should be a mandatory stay because the claims are based on the "same operative facts, are inherently inseparable from those against the related company and the present suit could have a critical impact on pending litigation." The full decision can be accessed at

www.ca5.uscourts.gov.

- *Brabham v. A.G. Edwards & Sons, Incorporated*, No. 03-60679 (5th Cir. 2004) - decided June 28, 2004

The Court of Appeals dealt with the issue of when a District Court may vacate an arbitration award. The Court recognized that there were limited basis to vacate an arbitration award. One of these basis is "manifest disregard of the law". The District Court did not find manifest disregard for the law, but found that the award was "arbitrary and capricious" and vacated the award. The Court of Appeals held that under the Federal Arbitration Act there is not an independent basis to vacate for arbitrariness and capriciousness. As the Court stated, "[o]ur established rules of deference foreclose all but the most limited review. Arbitrators need not give reasons for their awards. Even when arbitrators do provide a rationale for their awards, courts may not review that reasoning." Access the full opinion at www.ca5.uscourts.gov.

- *Freudensprung v. Offshore Technical Services, Inc.*, No. 03-20226 (5th Cir. 2004) - decided August 9, 2004

This is a case where the Court determined whether asserted claims for injuries suffered against various parties, with whom there was an arbitration agreement within the consulting agreement. The Court of Appeals in holding that the arbitration agreement should be enforced recognized that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards requires compelling arbitration of a given case and that Courts conduct only

in very limited inquiry. Under the Convention, a Court should compel arbitration if there is a written agreement to arbitrate the matter, the agreement provides for arbitration in a Convention signatory nation, the agreement arises out of commercial legal relationship and a party agreement is not an American citizen. When those requirements are met, the agreement should be enforced absent the agreement being null and void or inoperable. Here, since the claimant was not a U.S. citizen, all of the conditions were met and there is no prohibition in the Convention to require arbitration of these claims. The full case can be accessed at www.ca5.uscourts.gov.

- *Republic Insurance Company v. Paico Receivables LLC*, No. 03-11156 (5th Cir. 2004) - decided September 13, 2004

This is a case where the Court dealt with the issue of whether a party waives arbitration by instituting and participating in litigation. Although some action in litigation will not waive the right to arbitrate, the Court held that by invoking judicial process to the prejudice of the other party, a waiver does occur. See the full opinion at www.ca5.uscourts.gov.

The foregoing decisions show a continued tendency of the Courts to encourage arbitration although they can be waived and to enforce the arbitration awards once the arbitrators issue their decisions.