

# Houston Maritime Arbitrators Association Newsletter

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Fall 2005

## **HMAA ANNUAL MEETING**

The annual meeting of HMAA members was held at Houston City Club on Wednesday, June 29, 2005. There was quorum present and a number of proxies for voting.

The Officers and Directors present were:  
Chairman, Secretary & Director: Robert J. Ryniker  
President & Director: Ed Knutsen  
Treasurer & Director: Ed Bluestein  
VP, Marketing & Director: George McCarthy  
VP & Director, Gus Elmer was unable to attend as well as VP, Membership Tom Donovan. The President recognized the contributions of George Chandler and Winn Wyman for their efforts in the original organization and formation of HMAA.

The terms of two Directors, Ed Bluestein and George McCarthy expired as of this annual meeting. Ed Bluestein was unable to seek reelection under the term limits amendments to the HMAA Bylaws passed at the 2004 annual meeting. Chris Hart, who served as Chairman of the Nominating Committee, advised that there were four nominations for the two Director's terms. Those nominations were George McCarthy, Steve Stapleton, William Seele and Sharron West. In addition to the four nominations, the President opened the floor for any additional nominations. There were none and the election was then conducted. The counting of ballots including proxies, resulted in the re-election of George McCarthy and the election of William Seele as Directors. The President thanked the Chairman and members of the Nominating Committee for their efforts. The President then called upon the Chairman of HMAA to give his report which included a discussion of the minutes of last year's annual meeting as published in the September 2004 newsletter, various activities during the year, including the Chairman's views on the future of Houston Arbitration generally and the HMAA specifically as well as a report on the arbitrator's workshop conducted in February 2005. The President thanked the Chairman for his report.

A motion was then made and seconded to accept the minutes of the last annual meeting as previously submitted. The minutes were approved by the membership.

The Treasurer then gave his report and a motion was made, seconded and passed to accept the treasurer's

report as submitted. The President thanked the Treasurer for his efforts during the past year.

The President next asked George McCarthy, the Marketing Committee Chairman, to give his report and discussion followed on the subject of the marketing of HMAA. The President then asked for a motion which was made, seconded and passed accepting the Marketing Committee's report.

The President then delivered the membership report due to the absence of Tom Donovan.

The President then asked if there was any old business or new business to be discussed and there being none, the President then asked for a motion which was made, seconded and passed that the annual meeting be adjourned.

## **TREASURERS ANNUAL REPORT**

This report covers the 12 month period beginning June 1, 2004 and ending May 31, 2005.

Beginning Cash Balance \$14,908.25

Income \$5,505.00

Expenses \$2,612.99

Ending Cash Balance \$17,845.26

Income sources were from annual dues and arbitrators workshop registration fees. Expenses were for the 2004 annual meeting, web Page hosting and new editing program, one Board of Directors lunch meeting, and co-sponsorship with the US Merchant Marine Academy Alumni Association of a booth at the Offshore Technology Conference.. All bills are paid and there are no unusual expenses anticipated.

The ending cash balance reflects an increase of \$2,937.10 over the same period last year.

Respectfully submitted,  
Ed Bluestein

Treasurer

## **MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS**

On July 12, 2005 the regular meeting of the Board of Directors of Houston Maritime Arbitrators Association was held at the Saltgrass Restaurant on the Katy Freeway in Houston, Texas. All members of the board (Ryniker, Knutsen, Elmer, McCarthy, & Seele) were present.

The meeting was called to order at Noon by the Chairman of the Board, Robert J. Ryniker.

The first order of business was the approval of the minutes of the general meeting of HMAA held on June 29, 2005. Copies of the minutes were circulated to the Board members and after review, the minutes were formally approved.

The next order of business was the election of officers as required by the Bylaws. After full discussion the officers were elected as follows:

Chairman of the Board: Robert J. Ryniker  
President & Vice Chairman: Ed Knutsen  
Vice President at Large: Steve Stapleton  
Vice President Marketing: George McCarthy  
Vice President Membership: Tom Donovan  
Secretary: William H. Seele  
Treasurer: William Warnement

Discussion was then held regarding the coordination of the transfer of financial records from the retiring treasurer and execution of any necessary bank documents.

The board then discussed the proposal that Ed Bluestein be selected as an Honorary Life Member due to his many years of valuable service to the organization. Upon motion made and seconded the Board unanimously approved the proposal.

Further extensive discussion was held as to facilitating marketing and what steps to take to advance the organization. During such discussions it was agreed that the HMAA brochure needed to be updated and George McCarthy agreed to proceed with such task, subject to further approval of the Board.

There being no further business, the meeting was adjourned.

## **MARKETING H.M.A.A.**

As a way to get help us get the word out about HMAA, please send us the email and/or other contact information on anyone you know who may be interested in learning more about the HMAA. Through the individual contact networks

of our own members, we can reach a wider circle of potential members who would benefit from the HMAA but who otherwise may have been overlooked by our other marketing efforts.

Please send the email/contact information to our Vice President of Marketing at:  
[gemccarthy@cormacco.com](mailto:gemccarthy@cormacco.com)

**HMAA Member Survey:** Look for a member survey in the coming month as we query the HMAA membership on how to improve the overall value of the HMAA to its members and their clients. Subject survey forms will be distributed via email to all the members for their input. Your participation can only help us make the HMAA of greater benefit to all.

## **H.M.A.A. TRAINING SESSION**

Our last extremely successful and very well organized Arbitrators' Workshop was held at The Houston City Club on February 15-16, 2005. If there is sufficient demand from members and prospective new members for a Workshop to certify them for inclusion in the HMAA Register, we will probably plan to hold another Workshop session during the early part of 2006.

If you are interested, or know of some party who may have such interest, please ask them to contact the HMAA President, Capt. Ed Knutsen to express such interest and to be placed on our next Workshop potential attendees List.  
[ed.knutsen@earthlink.net](mailto:ed.knutsen@earthlink.net)

## **HMAA MEMBER AUTHORS BOOK**

We are pleased to announce that HMAA member Mr. Don Dykstra, who has authored articles for Tradewinds, BIMCO Weekly News, Ocean Navigator and the Nautical Institute can now add author of the book "Commercial Management in Shipping", published by the Nautical Institute. Don's book has a chapter on arbitration which I understand is very interesting.

For additional information please go to:  
[http://www.nautinst.org/brochures/commMg\\_mtShpng\\_0285.pdf](http://www.nautinst.org/brochures/commMg_mtShpng_0285.pdf)

## LAW COMMITTEE ON MARITIME ARBITRATION FALL 2004

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

### RECENT COURT DECISIONS ON ARBITRATION

In continuation to keep Members of the Houston Maritime Arbitration Association advised of current case which might be of interest to the Members, the following is a summary of some recent cases which may be of interest and helpful to the arbitration process. This is not a review or survey of all federal or state cases addressing arbitration issues but rather is a summary of three recent cases from the U.S. Court of Appeals for the Fifth Circuit. That circuit includes Texas.

***Keytrade USA, Inc. v. AIN TEMOUCHENT M/V***  
404 F. 3d. 891 (5<sup>th</sup> Cir. 2005)  
Decided March 23, 2005

This decision addressed the issue as to whether the bill of lading incorporated the voyage charterer's arbitration clause. The Court held that it did and reversed the trial court's denial of a motion to compel arbitration and remanded the case to the trial court with instructions to compel arbitration.

The time charter contained an arbitration clause calling for London arbitration. The time charterers subsequently entered into a voyage charter with Keytrade A.G. for a shipment of urea from Shuaiba, Kuwait to New Orleans. The voyage charter included a London arbitration clause and also specified the use of "Congen" bill of lading. The voyage charter was the parent company of Keytrade USA who received the bill of lading.

The bill of lading contained the following clause: "[a]ll terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated." The clause did not otherwise specify the charter party to be incorporated. In particular the name and date blanks were empty.

Owners asserted that the Court should require any disputes between the voyage charterers and Owners be submitted to arbitration relying on the Fifth Circuit case of *Cargill Ferrous International v. SEA PHOENIX M/V*, 325 F. 3d. 695 (5<sup>th</sup> cir. 2003) in which the Court held a bill of lading may be found to incorporate an arbitration clause of the charter party, even if one of the parties to the bill of lading is not a signatory to the charter party. The district court denied the motion distinguishing the facts of the case before it and *SEA PHOENIX*.

In the *SEA PHOENIX* case, the holder of the bill of lading was the voyage charterer. In this case Keytrade A. G. was the voyage charterer but Keytrade USA was listed on the bill of lading. The Court had to first determine as per the holding in *SEA PHOENIX* whether the bill of lading was in the hands of the voyage charterer. Relying on the finding of an agency relationship between the two companies, the Court of Appeals held that the bill of lading was in the hands of the voyage charterer.

The Court then had to address the second prong of the *SEA PHOENIX* test; that is whether there was "no confusion" from the bill of lading as to which charter party governed the rights of the parties. The Court found there was no confusion as the voyage charter specified the use of the Congen bill of lading whereas the time charter between owners and time charterers is silent. Thus from the totality of the facts, the arbitration clause was found to be incorporated and owners had a right to compel arbitration.

Before ordering the remand, the Court did have to address the issue of waiver. In this case owners pleaded the arbitration clause in their answer but waited for some time to assert that right by way of motion, having even filed a 100 page plus motion for summary judgment and participated in some discovery. The Court found that such did not constitute waiver, which is consistent with the current judicial view favoring arbitration of disputes.

***Lim v. Offshore Specialty Fabricators, Inc.***  
404 F. 3d. 898 (5<sup>th</sup> Cir. 2005)  
Decided March 24, 2005

This case involved international employment contracts between seamen from the Philippines and claims made by them in federal court in New Orleans under the United States Fair Labor Standards Act (FLSA). In addition to Mr. Lim, some 100 other seamen opted into the action. The particular claims involved violations related to the minimum wage and maximum hour requirements of the FLSA. The court held that the seaman's employment contracts were controlled by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958 and thus the trial court was wrong in denying the defendant's motion to dismiss based on the

Convention and contracts which included a clause requiring arbitration in the Philippines of disputes.

In reaching its decision, the Court among several issues had to address the trial court's basis for denying dismissal; that being the arbitration clause violated Louisiana Law and its strong public policy against forum selection clauses. The Court of Appeals disagreed with the trial court and held that the balance of public policy concerns favored application of the strong federal policy in favor of international arbitration agreements and the application of the Convention to seamen's contracts. Further the Court of Appeals held that there was no reason to conclude that the Philippine body charged with arbitrating employment claims could not consider an action arising under the US FLSA if the statute applies to the claims.

The denial of the dismissal as entered by the district court was vacated and the decision was remanded by the Court of Appeals to the district court to proceed consistent with the Court of Appeals decision.

**Beaird Industries, Inc. v. Local 2297, International Union  
United Automobile, Aerospace and Agricultural  
Workers Of America**  
404 F. 3d. 942 (5<sup>th</sup> Cir. 2005)  
Decided March 29, 2005

Although not a maritime case, the Court of Appeals did address the issue as to when does an arbitrator exceed his authority and thus require the award to be vacated. In this case the district court found the arbitrator had exceeded his authority and vacated the award entered. The Court of Appeals affirmed.

The dispute arose after a new ownership team took over Beaird. The dispute focus ed on Beaird's decision to subcontract landscaping work outside of the fence line. Grievance procedures were initiated under the collective bargaining agreement leading to arbitration. The arbitrator sustained the grievance and ordered Beaird to restore the landscaping work outside of the fence line. Even though the arbitrator agreed that Beaird's reservation to subcontract in the collective bargaining agreement is without specific limitation or enhancement, he still held that such clause could not be read on its own but had to done in the context of the complete and entire agreement. Thus he held there was no unqualified right to subcontract when Beaird had a responsibility not to act at the sacrifice of the interests protected by collective bargaining agreement. Thus he weighed the cost savings against the negative impact on the agreement and found same to weigh in the union's favor.

Beaird sought to vacate the award. The district court agreed holding that the arbitrator exceeded his authority by construing the subcontracting clause to

limit Beaird's right to subcontract bargaining unit work. By ignoring the unequivocal language of the agreement, he exceeded his authority. Even with a restricted review of an arbitrator's award, the district court could not overlook the flagrant violation of his authority by expanding the precise language of the agreement. The Court of Appeals agreed that an arbitrator cannot act contrary to express contractual provisions and not administer "his brand of industrial justice."