

# Houston Maritime Arbitrators Association Newsletter

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Spring 2007

## MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS

On Thursday, January 4, 2007, a 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 member of the board were present that being Chairman Robert J. Ryniker, George McCarthy, John Britton, Dave Scruton and William H. Seele.

The Board had invited the officers of the Association who are not members of the Board to attend. Steve Stapleton and Tom Donovan were in attendance.

The meeting was called to order at 12:05 p.m. by the Chairman of the Board Robert J Ryniker. Mr. Ryniker stated that there were several issues which he felt the Board should discuss. These included (1) whether it might be appropriate to consider a change of the name of the Association to facilitate its ability to act in disputes outside the traditional maritime area; (2) what had been done and what could be done to market the Association; (3) whether a training session should be scheduled and (4) any other thoughts or ideas the members of the Board and Officers present might have to advance the Association.

The Chairman advised that the idea had been broached that perhaps changing the name of the Association might lead to a broader appeal and use of the auspices of the Association to the full range of the transportation industry and/or other commercial disputes. Extensive discussion regarding the impact of such, as well as the inclusion of mediation services. It was determined that further thought was appropriate as well as consideration of the impact of such.

As to marketing, discussions were had regarding attending the CMA, Breakbulk Conference and/or other trade related meetings including having a booth at same. It was suggested that a golf outing might be a good marketing tool. Steve Stapleton discussed his experiences with such. The Board directed Mr. Stapleton to research the possibility of having a golf tournament related to scholarships for the industry and to report back to the Board at the next meeting as to such.

The scheduling of a training session was discussed. It was agreed that inquiry would be made to see if one would be needed and whether John Bowman could be the presenter. It was also discussed whether the training session might also be open to the membership who might wish to take same as a "refresher" course. It was also decided that it was time for a newsletter to be sent. Tom Donovan was authorized to proceed with soliciting input for the newsletter.

The scheduling of the annual meeting was also discussed but deferred until the next meeting.

As its final order of business, the Board then discussed a proposal that George Chandler be selected as an Honorary Life Member of HMAA due to his many years of valuable service to the Association, especially in the formative stages. Upon motion made and seconded, the Board unanimously approved the proposal and George Chandler was selected as an Honorary Life Member of HMAA.

There being no further business, the meeting, upon motion made, seconded and approved, was adjourned.

William H. Seele  
Secretary

**From the desk of the HMAA President**

Your board of directors over a series of board meetings has given considerable discussion on how to expand the scope of services and role of the HMAA to users or potential users of arbitration not only in the maritime and the related transportation industries but also other commercial areas. One topic of discussion has been whether it would be appropriate for the HMAA to change its name to broaden its appeal to other users or potential users of arbitration services.

Alternative dispute resolution is fast becoming a fact in contracts ranging from those most of have with cell phone companies, to leases for apartments and purchase agreements of many of the major and medium size retail firms.

The argument put forward in support of a name change is that in order to appeal to a broader base of prospective clients and industries, a name change is timely. The name Houston Maritime Arbitrators Association has served us well in establishing the association within the maritime community, in Houston and elsewhere. But if the association is to appeal to a broader base of clientele, including not only the overall transportation industry but also other possible industries, changing the name is a first step to be considered. The question which arises is whether the name Houston and Maritime are limiting the potential appeal of the association not only to a given industry but also to a geographical area?

It has also been put forward that changing the name could include an element of risk in alienating the core industry which the organization was initially established to serve; that is, the maritime industry. And that even if a name change were to be considered it should not abandon the word "maritime" from inclusion in same.

Changing the name is not without risk. For this reason we are appealing to the membership. As a member we need your input. We have two simple questions which we hope you will take a few minutes out of your busy schedule and respond. Firstly, should we change the name;

and secondly, if so, what would you like for it to be?

A name change will require that the membership vote on this. Our next opportunity will be the annual meeting to be held the third or fourth week of June 2007. This meeting will be held at a local notable restaurant, yet to be decided. But if last years annual meeting is any indication it will be a good one.

We need from the members an email to [info@hmaatexas.org](mailto:info@hmaatexas.org) no later than May 31, 2007 with your comments, ideas and suggestions.

**Houston Maritime Arbitrators  
Association  
Treasurer's Report**

This report covers the 11 month period beginning June 1, 2006 and ending April 30, 2007.

Beginning Cash Balance.....	\$19,640.39
Income.....	\$1,750.00
Expenses.....	\$2,310.54
Ending Cash Balance.....	\$19,079.85

Income sources were from annual dues and arbitrators workshop registration fees. Expenses were for the 2006 annual meeting, three Board of Directors lunch meeting, website renewal, and the 2006 arbitrator's workshop video cost. All bills are paid and there are no unusual expenses anticipated. The ending cash balance reflects a decrease of \$560.54. Please note there are many outstanding due memberships not received at the time of this update.

Respectfully submitted,  
William L. Warnement Jr, CPA  
Treasurer

## From the Desk of Steve Stapleton

Last years annual meeting at Crapitto's Italian restaurant was such a success we may have to move the venue to a larger location. The HMAA members who attended enjoyed a social hour followed by a wonderful tasty sit-down dinner (with choice of entrees) complete with wine, soft drinks, coffee and dessert which was complemented by the excellent service of the wait staff. It was a great way to conduct the business and hold elections.

Because we feel certain all those members who attended last year will want to attend again and those who did not and heard the reviews will want to attend, we are going to need help from you.

Depending on your response we will either keep the annual dinner meeting limited to the capacity of Crapitto's on a first commitment/reservation basis or if significantly more interest is shown, then we will move it to a larger venue.

In order to do this we ask you to take a moment and send an email to Steve Stapleton with a subject heading showing: HMAA ANNUAL DINNER - please email Steve at [steves@samtare.com](mailto:steves@samtare.com) and advise him your name, phone number and if any of your member colleagues will attend, please include their name and email and daytime phone.

The date will be a Tuesday, Wednesday or Thursday in June either 5-6-7, or 12-13-14 depending on the venue and availability. So please send an email to Steve before April 20th so he can get it all set.

### **FIRST ANNUAL HMAA GOLF TOURNAMENT AND DINNER FUND RAISER**

Hey, even if you don't play golf keep reading.

The HMAA is going to hold its first annual golf tournament and dinner fund raiser this October. Several locations and menus are currently being reviewed. It will be held on a Friday in October. It will include a lunch buffet, golf, cocktail hour and dinner after the tournament. For those who don't play golf, we would still love to have you join the cocktail hour and dinner after. Even better come out for the day

and help us run the tournament (more details will follow).

The proceeds from the fund raiser will go to further education in the maritime / transportation industry locally. It has been decided to share the proceeds with ITMA (International Transport Managers Association) who have been giving scholarships for years and they would love to have our assistance and support in furthering their scholarships and Texas A&M (Galveston) Maritime Business Administration.

More news to come but if you are interested in volunteering to help this baby grow and go please contact Steve Stapleton at [steves@samtare.com](mailto:steves@samtare.com) and let him know. Steve already appreciates those who have volunteered, willingly or not, but many more hands are needed to help.

**FIRST ANNUAL HOLIDAY PARTY** - to be held after New Year 2007 - more details to follow.

### **TRAINING**

The HMAA is reviewing the possibility of holding a training session this fall depending on the degree of interest from its members.

### **BINDING ARBITRATION TO NON-SIGNATORIES**

One of the issues which arbitrators and courts deal with is whether a non-signatory to an arbitration agreement should be bound by the arbitration agreement or the subsequent arbitration award. This is an issue which can be determined by an arbitration panel. However, even if the arbitration panel determines that a non-signatory is bound by the arbitration agreement this is one area where the court will make an independent determination of that finding. This is because under the Federal Arbitration Act, the court has an independent obligation to determine whether the threshold issue of arbitrability under Section 4 of the Federal Arbitration Act. The court has the obligation to proceed summarily to the trial of that issue. *See AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S.

643 (1986); *McAllister Brothers, Inc. v. A&S Transportation Co.*, 621 F.2d 519 (2d Cir. 1980). In fact, the court is not to give deference to the arbitration panel, but make its own independent determination. *See Local Union Number 38, Sheet Metal Workers International Association, AFL-CIO v. Custom Air Systems, Inc.*, 357 F.3d 266 (2d Cir. 2004).

A good discussion of the various basis on which a non-signatory can be bound to the arbitration agreement is discussed in the recent District Court's opinion of *Stolt-Nielsen Transportation Group B.V. v. Edible Oil Trading Corporation*, 2007 WL 194182 (SDNY 2007).

There are basically five theories which have been recognized by the courts to bind a non-signatory to an arbitration agreement. These are:

1. Incorporation by reference;
2. Assumption;
3. Agency;
4. Veil-Piercing/Alter Ego; and,
5. Estoppel.

The principles of these theories provide a general basis of holding a non-signatory bound to the arbitration agreement under contract and agency theories.

#### **Incorporation by reference** –

Incorporation by reference is often seen in the maritime context when a bill of lading incorporates the arbitration clause and thereby binds the non-signatory parties who are linked to that bill of lading through the general principles of contract or agency law. *See Matter of Arbitration Between Keystone Shipping Co. and Texport Oil Co.*, 782 F.Supp. 28 (SDNY 1992).

#### **Assumption** –

The theory of assumption is when the non-signatory actively participates in the arbitration proceeding. He has therefore assumed the arbitration and cannot thereafter refuse to be bound by the result of the arbitration determination. *See In Re Transrol Navegacao S.A.*, 782 F.Supp. 848 (SDNY 1991).

#### **Agency** –

Agency is simply when the non-signatory has been bound by an agent. If an agent is authorized to act on behalf of the non-signatory and enters into an agreement with an arbitration agreement then the principal is

thereby bound. *See Intravos Caymen Co. v. Orient Victory Shipping Co., S.A.*, 663 F.2d 4 (2d Cir. 1981).

#### **Veil-Piercing/Alter Ego** –

The alter ego theory is that the non-signatory and the signatory to the arbitration agreement are in fact and effectively the same company. This can be based upon either fraud or that one company dominates to such an extent that there is not a separateness of the corporations or business entities. Courts will pierce the corporate veil to prevent fraud or where a parent dominates and controls a subsidiary. *See Carte Blanc (Singapore) Pte., Ltd. v. Dinners Club International, Inc.*, 2 F.3d 24 (2d Cir. 1993). An alter ego argument is very fact intensive as to the relationship between the signatory and the non-signatory who an attempt is being made to be bound by the contract and/or arbitration agreement.

#### **Estoppel** –

Estoppel is when the non-signatory knowingly receives the benefit of the underlying agreement and therefore cannot or is prevented from denying that it should be bound by the agreement. *See generally, Thomson-CSF, SA v. American Arbitration Association*, 64 F.3d 773 (2d Cir. 1995).

#### **Conclusion**

As mentioned above, the most common use of the theories above to bind a non-signatory to an arbitration agreement is the incorporation by reference of the arbitration agreement into the bill of lading. The other theories likewise can bind non-signatory parties and the arbitration panel can make the determination, but the court will and has an obligation to make an independent determination that the non-signatory is bound by the agreement.