

ASK PAT V. MARTIN



AN AGENT'S AUTHORITY

A recent case from the Fifth Circuit Court of Appeals affirmed the judgment of the District Court sitting in Houston. The court's opinion discussed in some detail the duties and authority of a ship's agent in preparing and issuing bills of lading. The case involved a typical case of alleged in transit cargo damage to a shipment of 800 bundles of pipe shipped from a Chinese port to Houston. Upon discharge, the pipes were found to be substantially damaged.

The receiver/buyer was QT Trading. It had bought the pipe from a Chinese seller who arranged the ocean transportation with Daewoo Logistics. Daewoo in turn appointed the load port agent in China. Daewoo chartered the SAGA MORUS from Saga Forest Carriers who had time chartered the vessel from the head owner Attic. The vessel was operated by Patt Manfield & Co. QT sued them all and recovered its loss from none due in large part to the agent's actions at the load port. The claim against the vessel was dismissed because of a Hong Kong jurisdiction clause. Daewoo filed for bankruptcy and did not participate in the court action. The legal issue in the courts was which of the remaining defendants, Saga, Attic or Platt, was a "carrier" under COGSA and thus potentially liable for the alleged in transit loss.

The Daewoo/Saga Charter contained a commonly used clause that the master is to sign bills of lading as presented in conformity with Mate's receipts. It further authorized Daewoo and its agents "...to sign on master's behalf Bills of lading as presented in accordance with Mate's receipts."

"when the signing party exceeds its authority in signing bills of lading not in accordance with the master's instructions, the owner cannot be held liable as a COGSA carrier."

The Master sent a letter to Daewoo and its agent authorizing them to sign bills of lading on his behalf in accordance with the Mate's receipts.

Before the pipes were loaded, a P&I inspector found damage to a large number of the pipe bundles. His report was noted on the Mate's Receipts. Daewoo's agent signed "clean on board" bills of lading failing to incorporate or mention the notations on the Mate's Receipts. Of central importance was that the agent signed the bills of lading "As Agent for the Carrier Daewoo Logistics Corp."

The court found that QT had presented no evidence that the Master was an agent for either Attic or Platt or that either of them gave the Master any authority to bind them as carriers under the bills of lading. Therefore, the complaint against them was dismissed.

With respect to Saga, QT established that Daewoo's agent had authority to sign on behalf of the Master and Saga gave the Master authority to sign the bills of lading. Notwithstanding these facts, the court dismissed the claim. It held that Daewoo's agent signed the bills of lading on behalf of Daewoo, not the master or Saga. (The exact language on the bills of lading is quoted above.) Therefore, Saga was not a COGSA carrier under the bills of lading.

As a further grounds for dismissal, the court held that "...when the signing party exceeds its authority in signing bills of lading not in accordance with the master's instructions, the owner cannot be held liable as a COGSA carrier." Daewoo's agent exceeded its authority in issuing "clean" bills of lading not in accordance with the authority given by the master and therefore SAGA was not a COGSA carrier.

There were other issues decided by the court which are not material here. The opinion also leaves some loose ends. First, QT probably paid the shipper on a letter of credit which required clean on board bills of lading. Thus, QT would have paid for the pipes on presentation of a fraudulent document and should have a claim against the Chinese supplier and its agent. There is no indication in the court's opinion as to whether QT ever pursued the claim in rem against the vessel. Thus QT and its cargo underwriters were left without an adequate remedy for the loss noted upon discharge at Houston.

The case is important to remind agents that they should carefully examine the extent of their authority and consider the consequences of acting beyond the precise authority given to them.



ASBA NEW YORK GOLF OUTING

May 11, 2011

New York Country Club
New Hempsted, NY

First Place Team
James Ford
Eric Sherning
Hakaan Svedin
Peter Howard-Johnson



ANNUAL DINNER CRUISE



Dick Rudolph, Andrea Flynn & Ignacio Cardona



Second Place Team

A.J. DiLorenzo, Steve Lofberg, Nathan Dworak & Les Harris



Ray Burke, David St. Amand, Charles Rose & Paul Cooke

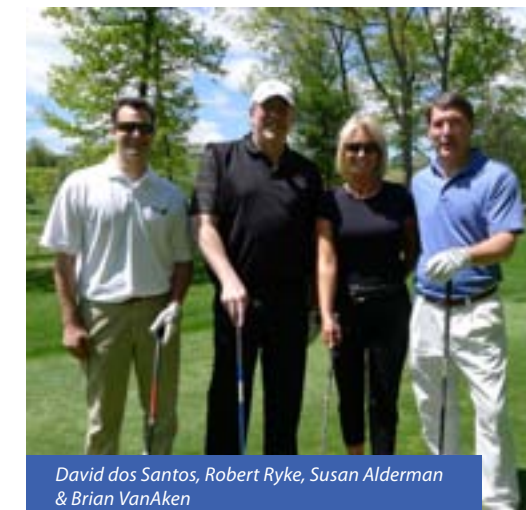


Third Place Team

Mike Ogle, Dennis Fuller, Kevin Conway & Bob McHue



Evan Sproviero, Milind Trilokekar, Tom Kane & Tom Roberts



David dos Santos, Robert Ryke, Susan Alderman & Brian VanAken



Bart Lawrence, Jan Andrusky, Evan Sproviero, Tom Linter, Tom O'Toole & Kevin Conway

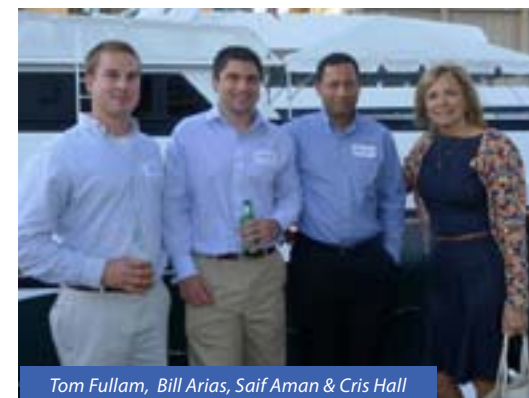
June 2, 2011

ASBA President, Tom Roberts and Jeanne greet members as they board the luxury cruiser Lexington for the annual dinner cruise.

Visit www.asba.org for additional photos.



Great time had by all - note the smiles! - Jim O'Brien, Janine Watt, Clay Sack & James Amis



Tom Fullam, Bill Arias, Saif Aman & Cris Hall



Dan Schildt, Jenna Withowski, Greg Kurantowicz & Garrett Eaton



Philipp Bau, Thomas Jakosen & Gil Landy



Dan Schildt, Garrett Eaton, Greg Kurantowicz, Chris Boehmer & Tom Snider



Andrew Boaz, Rich Farrell, Charles Bonner & Nick Geier



Jesper Bab, Robert Lynch, Lady Liberty & Ryan Lynch



Bob McHue, Mike Ogle, Jim Hurley, Tom Roberts, Kevin Conway, James Ford & Peter Howard-Johnson

CONGRATULATION STUDENTS!

Shipbroking and Chartered Vessel Operations

Noura Alsayed	Shaun Gilliland
Shawn Ballard	Raju J. Karukapally
Christopher Barber	Scott M. Krantzcke
Robert F. Barker	Joseph F. Megeed
Brent Berg	David I Perez
Nicholas B. Boles	Kevin M. Russom
Phillip Brown	Celeste M. Sanchez
Jeffrey C. Coats, Jr.	Karina Vallasmil
Omar El Beialy	Amanda L. Zaruba
Nicholas J. Geier	



Home Study Course

Nicholas J. L. Killinger
Kurt J. Pullman
Robert Wohltjen

COMING EVENTS (VISIT WWW.ASBA.ORG FOR DETAILS)

- Sept. 6** - ONLINE COURSE - Shipbroking & Chartered Vessel Operations
- Sept. 12** - 6:30pm - Board Meeting - NYC
- Sept. 28** - 8:30am - Agency Affairs Meeting - Eden Roc, Miami Beach, FL
- Sept. 28 - 30** - Annual Cargo Conference - Eden Roc, Miami Beach, FL
- Oct. 3** - ONLINE COURSE - Commercial Trade Transactions
- Oct. 6 - 7** - LIVE SEMINAR - Business of Shipping 1 - Houston, TX
- Oct. 27 - 28** - LIVE SEMINAR - Business of Shipping 1 - Stamford, CT
- Nov. 10 - 11** - LIVE SEMINAR - Business of Shipping 2 - Stamford, CT
- Nov. 4** - LIVE SEMINAR - Agency - New Orleans, LA
- Nov. 14** - 4:00pm - Board Meeting - NYC
- Nov. 14** - 6:30-9:30pm - Holiday Social - Windfall Lounge & Grill, NYC
- Dec. 1 - 2** - LIVE SEMINAR - Marine Insurance, Stamford, CT

MEMBERS ON THE MOVE

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WELCOME NEW MEMBERS

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