

February 2015



While Vessel Waits – The Agent Works **by Patrick V. Martin, ASBA Legal Counsel**

It is common knowledge that the shipping market is in recession. Everyone is trying to reduce expenses. Some Owners and Operators are trying to do this by denying they owe agents additional agency fees when the vessel is more than 3 days in port. Typically, additional day fees are significantly lower than their daily fee. An agent should insist on payment as, in my opinion, the owner's position is wrong.

The Owner makes basically two arguments:

The first is that the Owner's Pro-Forma Disbursement Account Request includes the contract phrase "all-inclusive lump sum agency". Some owners assert that the phrase covers all work done by the Agent whether the ship is in port or not. Where the Agent in its appointment acceptance* has limited the phrase to the "first three days" and quoted a per diem additional fee, clearly that will govern. Even where no additional fee is quoted, the "all-inclusive" phrase is limited to the Owner's estimate of when the vessel will be in port typically defined by the ETA – ETD dates. An agent would not agree to such broad and indefinite interpretation asserted by the Owner because there are too many variables and always the possibility of unforeseen circumstances that delay a vessel's stay in port.

The Owner's second argument is that the Agent does little or nothing to earn the additional fee. This is also wrong. Agents are on 24 hour stand by while the vessel is in port. Agents are in continuous liaison with port authorities, monitoring loading/discharging schedules, coordinating with ship suppliers, surveyors, port captains, cargo adjusters and, where required, making arrangements for crew changes, bunker supplies, pilotage, tugs or launch hire. An agent's value is determined by his ability to manage all of the above in order to save the Owner time and money.

I make the following arguments as ASBA's Legal Counsel:

The Owner is likely earning and billing for demurrage while the vessel waits.

Where there is an agreed fee for additional agency work, it should be paid.

Where there is no agreed fee, the Owner must pay for any work done by the Agent during the waiting time based on a reasonable compensation.

The Agent should keep detailed, accurate records of all work done in order to substantiate any additional fees charged.

* ASBA's suggested Agency Appointment Acceptance Terms are available on our website, www.asba.org

ANNUAL GENERAL MEETING

Guest Speaker - Judge Loretta Preska

Chief Judge District Court for the Southern District of New York



We were delighted to have had the Judge preside over our Annual Meeting.

Here's a brief excerpt from her presentation derived from "The Federal Court in New York: 225 Years and Counting" by John D. Winter and Richard H. Maidman.

The Federal Court, U.S. District Court for the Southern District of New York was created in 1789 through the Judiciary Act. President Washington nominated James Duane, member of the Continental Congress and first Mayor of the City of New York, to become the first District Judge of the Court.

The Court has decided cases dealing with individuals involved with corruption, organized crime, wall street and politics. Regrettably, the Southern District was also tasked with addressing the aftermaths of many of the tragic terror plots. Of late, bankruptcy proceedings have come to the forefront of the Court's docket that included Worldcom, Lehman Brothers, General Motors and Chrysler. Its leadership role in handling admiralty cases has distinguished this Court in the maritime community.

Judge Preska heard the guilty plea of Abduwali Muse, one of the Somali pirates responsible for highjacking the Maersk Alabama, who she sentenced in 2011. The former Chief Justice of the U.S. Supreme Court, Charles Evans Hughes Sr. remarked, "Courts are what judges make them and the District Court in New York has had a special distinction by reason of the outstanding abilities of the men and women who have been called to its service." Judge Preska clearly is one of the women of whom he is referring.





**Lou Mellis, Brian Rudolph, Frank Moran,
Tom Roberts and Ron Orton**



**Mike Ogle, Rhoda Voth, Marygrace Collins,
Mark LaFrankie and Paul Hirtle**

PRE-HOLIDAY SOCIAL

Held at the St. Andrews in NYC on Monday, November 17, 2014



**Tom Snider, Gabe Slutsky, Jeanne Cardona,
Herbert van Wyngaarden, Dan Schildt
and Marcos Souza**



**Mickey Belgrod, Milind Trilokekar,
John Tucker and Peter Saitta**



Chris Young, Scott Jones and Bill Rocha

ASBA TANKER BROKER LUNCH - February 19, 2015 - Houston, TX

Guest Speaker

Mark Patten - Chevron Shipping Company



ADVICE from PVM, ASBA Legal Counsel

An agent should never sign a document with blanks for date, time, cargo quantity and quality, statement of facts, time sheets etc. The agent has a duty to receive and acknowledge receipt with the date and time the document was so received and noted on the document. The agent might note that the receipt was "without prejudice" or similar language. Signing a document with blanks may serve to invite future trouble.

ASBA's Certification

10 Year Anniversary - Feb. 2015

INTERTANKO Panel Meeting

Jeanne was given the opportunity to highlight the benefits of appointing



ASBA Certified Agents at INTERTANKO's North American Panel meeting. It was a unique opportunity to address an audience of tanker owner/operators and charterers. Her presentation is available on the website under "Appoint ASBA Certified Agents" tab. Jeanne and member agents are proud to announce that ASBA's Certification celebrated 10 years this month.

Office of Foreign Assets Control (OFAC) Cuban Assets Control Regulations

OFAC promulgated a final rule amending the Cuban Assets Control Regulations to implement policy changes to further engage and empower the Cuban people. 80 Fed. Reg. 2291

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-16/pdf/2015-00632.pdf>

YSBA SOCIAL February 19, 2015 - Houston, TX



CALENDAR OF EVENTS

Click event name for more details

March 23, 2015

[ASBA/Baltic Cocktail Reception](#)

Stamford, CT

May 7th, 2015

[Golf Outing – NY Country Club](#)

New Hempsted, NY

Sept 30 – Oct 2, 2015

[Annual Cargo Conference](#)

Eden Roc Resort – Miami Beach, FL

WELCOME NEW MEMBERS

AFFILIATE MEMBERS

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IN MEMORIAM

RICHARD FERNANDEZ

ROBERT FLYNN

ERIC HALLMAN

Congratulation Students!

Home Study Course

Brian Conry
Brian D. Parks
Jeff Punzalan
Georges A. Tollinche

Shipping Intensive 1 Live Semianr Stamford, CT

Christopher J. Ardezzone
Peter T. Bazos
Paul-Timothy Cacicedo
Mark Dominick
Edward Fargo



Elena Mihaila
Eric Pierot

Shipbroking & Chartered Vessel Operations Online Course

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Nils P. Hansen
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Brian S. Odell
Daniel Palmer
Renan Queiroz Mahalhaes Pinto
Heath Shyman
Ricky Tang
Jose Samuel Valez Guillen
Jonathan R. Zier

Agency Live Seminar New Orleans

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