

**MINUTES OF THE
CHARTERING & DOCUMENTARY COMMITTEE
PLENARY MEETING HELD AT
TABLE BAY HOTEL CAPE TOWN
AT 9.30 a.m. ON THURSDAY, OCTOBER 8th 2009**

Present:

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| Mrs. M. Collins | Chairman |
| Mr. T.D. Paulsen | President FONASBA |
| Mr. B. Szalma | Vice Chairman |

In Attendance:

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| Mr. J.C. Williams FICS | General Manager |
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| Mr. R. Garcia Piñero | Argentina | Mr. F. Carlini FICS | Italy |
| Mr. P. Campbell | Argentina | Mr. G.E. Duci | Italy |
| Mr. J. Dulce | Argentina | Mr. M. Gorgoni | Italy |
| Mr. G. Hernandez | Argentina | Mr. T. Iigaki | Japan |
| Mr. M. Phillips | Australia | Ms. T. Nomura | Japan |
| Mr. L. Russell | Australia | Mr. A. El Glaoui | Morocco |
| Mr. J. Hunter | Belgium | Mr. A. Mantrach | Morocco |
| Mr. X van Engelen | Belgium | Mr. S. Ahardan | Morocco |
| Mr. G. Gordon Findlay | Brazil | Mr. M.S.B. Duin | Netherlands |
| Mr. M. Froio | Brazil | Mr. J.W. van der Huel | Netherlands |
| Mr. L. Oliviera da Silva | Brazil | Mr. G. Wastell | Netherlands |
| Mr. A. Zanin de Oliviera | Brazil | Mr. K.F. Eriksen | Norway |
| Mr. W. Rocha Junior | Brazil | Mr. A. Tablizo | Philippines |
| Mr. J.C. Gomes | Brazil | Mr. A. Belmar da Costa | Portugal |
| Mr. E. Adamczyk | Brazil | Mr. E. Bandelj | Slovenia |
| Mr. J.E. Lopes | Brazil | Mr. P. Scannell | South Africa |
| Mr. N. Hristov | Bulgaria | Mr. A. Baard | South Africa |
| Capt. J. Karmelić | Croatia | Ms. T. Tsautse | South Africa |
| Mr. C. Papavassiliou | Cyprus | Mr. A. Botha | South Africa |
| Mr. E. Kouzapas | Cyprus | Mrs. B. Blomqvist | Sweden |
| Mr. A. Houtved FICS | Denmark | Mrs. J. Cardona | USA |
| Mr. G.J. Heinonen | Finland | Mr. M. Ogle | USA |
| Mr. E. Holma | Finland | Mr. S. Larsen | BIMCO |
| Mr. S. Lomberg | Finland | Mr. A. Jamieson | ITIC |
| Mr. C. Génibrel | France | Mr. G. Wramfelt MICS | Shipbrokers' Register |
| Mr. J. A. Foord FICS | Great Britain | | |
| Mr. B.J. Stokes FICS | Great Britain | Observers | |
| Mr. P.J. Wood FICS | Great Britain | Mr. B. Ingpen | |
| Mr. R. Zuck | Israel | Students from | |
| Ms. Cosma Cavallo | Italy | Simonstown School | |
| Ms. G. Reghellin | Italy | | |

Item

Action

1. President's Welcome, Chairman's Opening Address

The **President** welcomed all those present to this Plenary meeting and congratulated the **Chairman** on an interesting and varied agenda. The **Chairman** also welcomed delegates to the meeting and made special mention of **Mr. Scannell, Ms. Tsautse, Mr. Baard** and **Mr. Botha** of SAASOA. She also extended a particular welcome to Mr. Ingpen and his students from Simonstown School and expressed the hope that they would find the meeting interesting.

2. Minutes of the Last Meeting held Opatija, October 17th 2008

With no comments having been received, the minutes **were approved.**

3. **Matters Arising**

None.

4. **Market Reports**

The following market reports were presented and questions taken. Unfortunately, as Mr. Stes was unable to attend the meeting at short notice, there was no gas market report. Copies of the presentations are available in the Members' Area of the FONASBA website, www.fonasba.com but in summary the main points were as follows:

Dry Bulk – The **Chairman**

- The paradox that as the global economy turns sharply down, seaborne iron ore movements increase and seaborne coal movements, although expected to be lower in 2009 than 2008, are still running at around 2007 levels
- China now accounts for 85% of global growth in coal consumption
- Coal prices rose sharply in 2008 compared to 2007
- Freight rates have recovered sharply from their early 2009 lows
- The bulk carrier order book is equivalent to 66% of the current world fleet but cancellations are running at only 10% of the order book
- Only 26% of the current fleet is more than 20 years old and almost 29% is less than 5 years old
- China continues to drive demand for raw materials as an acquisitive middle class seeks consumer goods, followed by India. In China car ownership demand is expected to increase 5x in the next 10 years and in India it has doubled in five years
- Global GDP growth is expected to return to positive numbers in 2010

Tanker – **Philip Wood**

- The market remains extremely volatile with the spectacular gains of 2007-8 almost completely reversed in 2008-9
- Earlier in the year, falling shipping demand drove Rotterdam bunker prices down by 74% to US\$ 165/tonne, although this has now moved back to around US\$ 400 /tonne
- The Baltic Dry Indices, clean and dirty, have both shown a partial recovery in the last month
- Global oil demand has fallen by 2.7% since 2008 to 84 million barrels/day but is expected to increase slightly to 85 million barrels/day in 2010
- The world tanker fleet currently stands at approximately 5,200 vessels, 429 million dwt
- Tanker fleet growth is anticipated to be 8% in the period Aug 2009 – Dec 2010
- 1,505 vessels, 142 million dwt are on order,
- Available short term floating storage, as alternative to layup, has a capacity of 55 million barrels of crude oil and 60 million barrels of distillate
- 800,000 dwt of capacity laid up in August, highest level since 2003, 7.1 million dwt classed as inactive, i.e. not moving for more than 62 days
- Average earnings for a VLCC US\$ 33,000/day in August 2009, half of the rate in 2006 and one third of that in 2008
- One third of VLCC fleet scrapped in 2009
- Forward freight market (FFA's) anticipating increasing rates into 2010

Container – **Rodolfo Garcia Piñero**

- Massive reduction in container movements due to global downturn
- Freight and charter rates at lowest ever levels
- Huge losses by container lines due to excess capacity
- Nearly 10% of the fleet laid up
- 165,000 TEU of capacity cancelled in the past year, no new orders in 2009

The Brazilian Cruise Market – **Luciano Oliveira da Silva**

- An abundance of natural resources is making Brazil increasingly affluent, therefore increasing local demand for cruises
- All the major cruise operators now offer services out of Brazilian ports
- 5 lines offer services to exclusively Brazilian customers, resulting in 1250 port calls with 16

ships

- Brazilian cruise passengers broadly spread across age range
- 750,000 passengers moved through Santos, the main hub port in 2008, with a further 350,000 going through Rio de Janeiro

European River Transport – **Botond Szalma**

- The Danube river transport sector is suffering considerable difficulties including increased competition from road as well as draft and other infrastructure issues in the river itself
- Freight rates on the Danube remain at very low levels
- Much needs to be done to enhance the use of the Danube and other river systems but there is a lack of support from national and regional authorities
- The carrying capacity of the river system in Europe is immense, it just needs to be managed and used appropriately.

The **Chairman** thanked all the speakers for their excellent presentations.

5. **ITIC Claims Review**

Mr. Jamieson began by stressing the increasing risks to brokers from the significantly changed market conditions prevailing as a result of the economic crisis. He said that owners and charterers were taking every opportunity to cancel or amend charters in the light of ongoing liabilities and their actions would have an adverse impact on the broker.

Commission Claims

In terms of commission claims, he said the level of debt collection activity undertaken by ITIC in 2009 was the highest since 1995. In recent months the number of claims it was handling had doubled and the number of shipping bankruptcies was significantly increased since the Opatija meeting.

The practice of early cancellation of timecharters was on the increase and unless specifically stated in the original agreement, brokers are not usually able to claim for the full commission due to them had the charter run its full course. The renegotiation of a charter part way through can also lead to a broker being denied his full commission, particularly if the owner renegotiates directly with the charterer, and clearly a cancellation clause cannot be used to claim the balance of the commission of the charter is renegotiated, not cancelled outright. ITIC has enjoyed some success in convincing owners to treat their brokers fairly and settle the full commission due on the basis of the original charter but this is not always the case.

Ship Valuations

The demand for valuations has almost completely ceased in 2009, due in part to pressure from banks seeking to prevent brokers giving valuations without their express permission, and the paucity of valuations made it very difficult to determine accurate market levels. The detrimental impact of low valuations on banks asset registers had also seen banks trying to influence the wording on valuation certificates.

Although the recently launched Hamburg Valuation Index was a novel approach to ship valuation – using a whole-life valuation model – the traditional method of market value at the time of sale/purchase remained the most used valuation technique and it was clear that order would return to the market as valuation activity picked up.

Given the various issues currently affecting the ship valuation market, **Mr. Jamieson** suggested FONASBA should develop a standard valuation clause.

How Well Should You Know Your Principal?

Given the current market conditions, and in particular the levels of bankruptcies and liquidations, brokers should be aware that injured parties are using every opportunity to shift blame and to claim on brokers and others. This has led to action being initiated on the basis of very weak evidence, but evidence nonetheless that can result in significant danger for the brokers concerned.

Brokers must therefore take utmost care to ensure that their records are accurate and up to date, as indeed must any statements, written or verbal, that might render the liable for action. Any statement made in relation to the standing of a principal, for instance, must be very carefully worded, as describing an owner as “first class” may be held against the broker should that owner subsequently default. Passing on general market gossip or widely held opinions can be extremely prejudicial to the broker so ideally any comment on the financial or performance standing of a principal should be restricted to what he, the broker, has independently verified. This is particularly important when dealing with new principals, or in emerging markets, where traditional financial standards may not necessarily apply.

Guarantees – What Brokers Should Be Aware Of

Again, the market conditions are bringing greater focus on the issue of guarantees. In English law, guarantees must be in writing and as they are completely separate from the charterparty, they require special permission from the principal before they are issued. If making a guarantee, it must be based strictly on the terms of the charterparty as it stands at the time the guarantee is issued. Any subsequent change to the terms of the charter can nullify the guarantee and so a new one must be issued. If a broker is offered a guarantee or required to obtain one, it is the responsibility of the broker concerned to ensure he does indeed obtain the full written document. Proceeding on the basis of an offered guarantee that is not subsequently received leaves the parties unprotected.

Summarising his presentation, **Mr. Jamieson** said that brokers were very much in the firing line under the current market conditions and should therefore be extra vigilant in protecting themselves against attempts to avoid paying due commissions, claims for misrepresentation, failure to follow established procedures and other actions. It is to be hoped that the less scrupulous claims would reduce as the market improves but until then extra care needs to be taken.

The **Chairman** thanked **Mr. Jamieson** for an excellent presentation and for the timely warnings. She said that developing the standard valuations clause was an excellent initiative which would provide a valuable resource for brokers and, as an added benefit, raise FONASBA’s profile once again. She therefore asked **Mr. Jamieson** to liaise with the **General Manager** in taking the project forward and to keep the C&D Committee updated.

6. The Rotterdam Rules

The **General Manager** made a brief presentation on the new liability regime. A copy of his presentation is also available for download from Members’ Area of the website (www.fonasba.com) but in summary, the main points were:

- The need for a modern, consistent regime covering all modes and recognising the current variety of modes and types of transport
- A requirement to put in place measures to accommodate future developments in electronic commerce and communication
- The complexity of the Rotterdam Rules, that is a function of the scope and breadth of its coverage
- The disappearance of bills of lading and other recognised forms, to be replaced by “transport documents”
- The unproven nature of the Rules and the need for them to be taken through the courts to bring about legal certainty in a number of areas
- That the Rules apply primarily to liner transport but can be extended to bulk and project cargo if there is no charterparty or if both parties agree
- The carrier now has a liability to maintain his vessel in seaworthy condition throughout the voyage
- The nautical fault exception is no longer available
- Package or unit limits have been increased and a definition of a “package” has been provided
- All parties that operate within the port area (including port authorities) are now defined as maritime performing parties” and are liable under the Rules
- “Volume” contracts are specifically recognised for the first time, but there is no de-minimis

- limit for a contract to gain “volume” status
- Exclusive jurisdiction clauses are no longer acceptable
- Rotterdam will require a rewrite of liner clauses and booking procedures will have to be amended
- 16 states had signed up by mid September so four more needed to enter into force one year later (*20 states now signed up so will enter into force in November 2010*)

In ending his presentation, the **General Manager** acknowledged the support provided by messrs Holman, Fenwick & Willan in providing background information to this presentation. With their kind permission, a copy of their Frequently Asked Questions paper is attached with these minutes.

7. **Member Issues**

No issues had been proposed by members. The **Chairman** did, however, confirm that in the future the cruise report would cover a different area each year. For the 2010 meeting she suggested to **Mr. Hristov** that he might consider finding a local speaker to cover the Black Sea/Eastern Mediterranean sector.

8. **BIMCO and INTERTANKO Reports**

At the request of the **Chairman**, **Mr. Larsen** reported on recent activity by the BIMCO Documentary Committee. Amongst the projects being taken forward, he highlighted the following:

- With the assistance of ITIC, the SHIPMAN contract revision had been completed
- The crew management agreements were in the final stages of revision and would be launched together with the revised SHIPMAN form in November 2009
- Revision of the Standard Pooling Agreement form had been delayed awaiting clarification of the impact of the recent EU action on conferences and other collective agreements. With the outstanding issues having now been clarified, the revision process could restart. The BIMCO working group would be maintaining close contact with the Commission as the work progress in order to ensure continue compliance
- A Working Group has been established to ascertain the implications for owners of the increased use by charterers of the “Rightship” vetting process. It is expected BIMCO will issue standard clauses to protect owners fixing on time and voyage charters
- At its launch in March 2009 the Standard Piracy Clause had been criticised as being too owner orientated and this is now being reviewed with a view to possible revision
- The Documentary Committee is also looking at the Stowaway, Greenhouse Gas Emission and Standard Timecharter guarantee documents with a view to revision
- The Standard Newbuilding Clause is gaining support and is already being used regularly. There are encouraging signs that it is also gaining acceptance from the yards in the Far East that had previously opposed it.

The **Chairman** thanked **Mr. Larsen** for his update.

As Mr. Knudsen from INTERTANKO was unable to attend the meeting, the **General Manager** read out a prepared statement on the work of the INTERTANKO Documentary Committee. A copy of the report is attached to these minutes.

9. **Any Other Business**

Following from the reference made previously by **Mr. Larsen** in his report, the **Chairman** gave a brief presentation on the “Rightship” vetting procedure. The main points were:

- With more than 2,300 casualties and almost 3,900 detentions in 2008, it was clear there was a need for a vetting procedure for bulk carriers
- Analysis of casualty and accident statistics showed a correlation between the standard of maintenance and operation and casualty numbers
- An explanation of the “Rightship” vetting process
- A warning of the various categories assigned to inspected vessels, from “Vetted” to “Approved” and the dangers of confusing their meanings.

Mr. Ogle raised an issue relating to the use of the INTERTANKO “Competitive Agency Fee Clause” as incorporated in various charterparties. He said this could be used to the detriment of the agent and said this should be raised with INTERTANKO. (*Subsequently ASBA has raised the issue with INTERTANKO*).

10. Date and Place of Next Meeting

The **Chairman** advised that the next Plenary Meeting of the Chartering & Documentary Committee would take place in October 2010 in Varna, with the date to be confirmed in due course.

There being no further business to discuss, the Chairman brought the meeting to a close.

She then invited Mr. Ingpen to make a presentation on the work of the Simonstown School which was very well-received by the delegates.

JCW/11.2009