

**MINUTES OF THE
PLENARY MEETING OF THE
CHARTERING & DOCUMENTARY COMMITTEE
HELD AT THE MELIA GRAND HERMITAGE HOTEL
GOLDEN SANDS, VARNA
AT 9.30 a.m. ON WEDNESDAY, 13th OCTOBER 2010**

Present:

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

In Attendance:

Mr. J.C. Williams FICS	General Manager
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Mr. R. Garcia Piñero	Argentina	Mr. V. Totorizzo	Italy
Mr. J. Dulce	Argentina	Ms. G. Reghellin MICS	Italy
Mr. G. Hernandez	Argentina	Mr. F. Carlini FICS	Italy
Mr. L. Russell	Australia	Mr. T. Iigaki	Japan
Mr. G. Gordon Findlay	Brazil	Mr. T. Saita	Japan
Mr. M. Froio	Brazil	Ms. T. Nomura	Japan
Mr. L. Oliviera da Silva	Brazil	Mr. M. Andrade Gomez	Mexico
Mr. W. Rocha Jnr.	Brazil	Mr. E. Pinzas Vidmar	Mexico
Mr. R. von Söhsten	Brazil	Mr. J. Vega Arriaga	Mexico
Mr. I. Demirov	Bulgaria	Mr. J Cutberto Parra Mendoza	Mexico
Mr. Y. Stankov	Bulgaria	Mr. N. Banovic	Montenegro
Ms. S. Draganova	Bulgaria	Mr. A. Mantrach	Morocco
Mr. A. Marinov	Bulgaria	Mr. M.S.B. Duin	Netherlands
Mr. M. Roussev	Bulgaria	Mr. J.W. van der Heul	Netherlands
Capt. J. Karmelić	Croatia	Mr. K.F. Eriksen	Norway
Mr. C. Papavassiliou	Cyprus	Mr. L. P. Storfjord	Norway
Mr. A. Houtved FICS	Denmark	Mr. A. Belmar da Costa	Portugal
Mr. J. Vikstrom	Finland	Mr. E. Bandelj	Slovenia
Mr. G.J. Heinonen	Finland	Mr. N. Warner	South Africa
Mr. S. Lomborg	Finland	Mr. J. Fernandez	Spain
Mr. C. Génibrel	France	Mrs. B. Blomqvist	Sweden
Mr. K. Bültjer	Germany	Mr. B. Tonguc	Turkey
Mr. J.A. Foord FICS	Great Britain	Mr. T. Roberts	USA
Mr. B.J. Stokes FICS	Great Britain	Mrs. J. Cardona	USA
Mr. P.J. Wood FICS	Great Britain	Mr. S. Larsen	BIMCO
Mr. P. Demeter	Hungary	Mr. A. Jamieson	ITIC
Mr. R. Zuck	Israel	Mr. G. Knudsen	INTERTANKO
Mr. M. Gorgoni	Italy		
Mr. G. Masucci	Italy	Observers	
Ms. C. Cavallo	Italy	Mr. K. Turkantos	Turkey
Mr. G.E. Duci	Italy		

Item

Action

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

The **President** welcomed all those present at the meeting. He extended a particular welcome to **Mr. Tonguc** and **Mr. Saita**, both attending the plenary meeting for the first time, and to messrs. **Jamieson, Larsen** and **Knudsen**.

The **Chairwoman** also welcomed delegates to the meeting and expressed her thanks to the Bulgarian association for hosting the excellent Welcome Reception the night before.

2. **Minutes of the Last Meeting held Cape Town, 8th October 2009**

Mr. Wood advised that point 3 of the minutes of his tanker report for 2009 should refer to the Baltic **tanker** indices, not dry. With those amendments having been noted, the minutes **were approved**.

3. **Matters Arising**

None.

4. **C&D Market Reports**

The meeting received the following presentations:

- Tanker – Philip Wood
- Dry Cargo – the **Chairwoman**
- Containers – Rodolfo Garcia Piñero
- Brazilian Offshore Supply Market – Mario Froio
- River Transport and the Danube River Strategy – the **Vice Chairman**

Each presentation was followed by a question and answer session.

Copies of the presentations are attached – and also available from the Members' Area of the FONASBA website.

5. **ITIC Claims Review**

Mr. Jamieson reported on a number of issues currently giving rise to claims by, and against brokers. These included:

Unpaid commissions – As predicted in Cape Town last year, ITIC's workload in recovering funds owed to brokers and agents has continued at a high level. The number of claims for non-delivery of newbuildings has declined, but there remain a number outstanding for unpaid commissions due from yards in China, Italy, Bulgaria and Korea.

In the chartering and second-hand markets, claims by brokers being cut out of commissions for the continuation or renewal of charterparties are now on the increase but it is reassuring to note that the courts in the UK and Norway appear to be willing to support the broker.

Fraud continues to be a problem, in both the agency and broking sectors with deliberate fraud by agency staff, primarily theft of freight, release of cargo without a bill of lading and bill of lading fraud, an area for significant concern. If an agent or broker knowingly commits a fraudulent act, even if clearly instructed to do so by the principal, then he has committed fraud and the "as agents only" convention will not provide protection from prosecution. As reported in Cape Town, payment of commissions to parties other than those specifically involved in the fixture remains an issue. Brokers should be very careful to ensure – to their own satisfaction – that commissions are only paid to those parties that are duly entitled to receive same. Again, an instruction from the principal is not sufficient to protect the broker against subsequent claims.

The introduction in the UK of the Bribery Act 2010 has brought anti-corruption legislation back into focus and this and other acts, the US Foreign Corrupt Practices Act is another, expand the scope of actions that can be considered to be bribery and again extreme care is required to ensure a company does not fall foul. Also giving cause for concern is the proliferation of ethical policy clauses, many of which have emerged as a result of the increased anti-corruption legislation. Brokers, agents and principals must check any such documents carefully to ensure they do not make the company liable for additional obligations that may be incorporated in the clause.

Both the European and US Iran sanctions policies have wide-ranging powers and although some may in practice be hard to apply, brokers and agents need to be aware of the liabilities that may arise.

Other issues continuing since last year include making brokers unverifiable claims about the fiscal and operational competencies of companies, e-mail issues including not ensuring safe receipt of tanker demurrage claims, not proof reading messages before they are sent and careless use of the "forward", "reply" and most importantly, "reply to all" buttons. Brokers also continue

to rely on outdated vessel speed and performance data (usually held in their own databases) instead of using those supplied by the owner. Poorly constructed charterparties and failing to check that the details in the recap do accurately reflect the previously agreed position are also common errors that have given rise to claims.

Concluding, **Mr. Jamieson** reminded the meeting that in the current economic climate claim levels are very high and the broker and agent needs to exercise considerable care to ensure his own position is protected. He offered delegates a copy of the latest ITIC Claims Review (copy attached) which gives further detail on some of the issues raised above.

The **Chairwoman** thanked **Mr. Jamieson** for another excellent presentation.

10. **BIMCO and INTERTANKO Documentary Committee Reports**

In order to best use the time available for discussion, the **Chairwoman** decided to bring this item forward and asked **Mr. Larsen** to report on work of the BIMCO Documentary Committee. **Mr. Larsen** thanked the **Chairwoman** for the invitation to address the Committee and apologised for the absence of Karel Stes, Chairman of the Committee who had been present at the Opatija meeting.

He started his short presentation by advising that BIMCO was overhauling its Documentary Committee structure to ensure it was able to meet the challenges of its future workload and in this context reiterated his invitation for FONASBA to participate in the Committee.

- Turning to the current work programme, he mentioned the following documents and clauses currently under development:
- Standard Marine Risk Assessment Clause – also known as the “Rightship” clause. Developed to protect owners against the consequences of inaccurate inspections, this clause was the subject of considerable debate within BIMCO and a certain amount of disagreement amongst the members. It would be discussed further at the Documentary Committee meeting in London in November and it was hoped that it could be ready for adoption in May 2011. As part of this process BIMCO may undertake direct talks with Rightship.
- Norwegian Saleform Review – BIMCO members felt the form was due for revision and so discussion was underway with the Norwegian Shipbrokers’ Association on the timetable for any review. Further information would be provided in due course. **Mr. Larsen** also expressed BIMCO’s concerns about the development of the Singapore sale document, and in particular its proposed arbitration clause. He said BIMCO would continue to monitor this issue and take action if deemed appropriate.
- Draft Slow Steaming Clause – This long-term, technically complex project is continuing and will be discussed further at the London meeting.
- EU Advance Cargo Declaration Clauses – serving a similar purpose to the previously issued US Clauses (not suitable for modification to meet the EU requirements) these should be approved in London and will then be distributed. (*Done*).
- Sanctions Clause – Initially developed to cover issues arising from sanctions against Iran, this recently released document may require revision to broaden its coverage if sanctions are applied elsewhere.
- Draft Pooling Agreement for Time and Voyage Charter Parties – developed in response to European Commission action against liner conferences, these draft clauses are currently the subject of voluntary discussions between BIMCO and the Commission in order to ensure they do provide the required level of protection available under European law.

Mr. Larsen then took questions on a number of the actions raised, including the possible impact of the introduction of the Singapore sale form and the revision of the Norwegian form (**Mr. Houtved** asked if this could incorporate reference to the FONASBA Quality Standard) and **Mr. Wood** expressed his surprise at the attitude of the dry cargo community to the Rightship clause, comparing same with the introduction of the myriad tanker vetting clauses. On this latter point, **Mr. Larsen** said that the process was not the issue, but concerns had been expressed at the impartiality of the inspections.

The **Chairwoman** thanked **Mr. Larsen** for his excellent presentation. She then asked **Mr. Knudsen** to report on the work of the INTERTANKO Documentary Committee. A copy of his presentation is attached to these minutes. Following his presentation, **Mr. Knudsen** advised that both he and the Chairman of the INTERTANKO Documentary Committee would be standing down at the end of the year and he thanked FONASBA for its support and friendship during the period he had been its representative. He said his confirmation of his replacement was imminent and if the anticipated nomination was confirmed he was could guarantee that FONASBA would continue to enjoy an excellent relationship with INTERTANKO on both the business and personal levels. (*Subsequently confirmed that Michelle White, INTERTANKO Counsel based in London, would represent the organisation in the future.*)

Led by **Mrs. Cardona**, the meeting expressed its warm and grateful appreciation for the support given by **Mr. Knudsen** to FONASBA and for the active participation of himself and his wife in all aspects of the Federation.

The **Chairwoman** then asked AMANAC, the Mexican association, to make a short presentation of the port information CD they had recently developed. This was very well received by the meeting, which was also interested to note that Mexico is now two years into a project to maximise the use of electronic exchange of information between shipowners/agents and the customs authorities. Copies of the CD were handed to delegates at the meeting and a copy of AMANAC's introductory presentation is available from the FONASBA website.

Rotterdam Rules Update

6. The **General Manager** advised that very little progress had been made on the adoption of the Rules, with only one more country, Luxembourg, having signed the Rules but none having adopted them yet. China and the UK have still not signed.

Revision of the IMO Bulk Cargo (BC) Code

7. The **Chairwoman** drew the attention of the meeting to the current review of the IMO BC Code. IMO had invited Member States to put forward proposals for amendment of the Code and a considerable number had already done so (a copy of the report issued to the Maritime Safety Committee following the 15th meeting of IMO's Dangerous Goods, Solid Cargoes and Containers (DSC) subcommittee is attached) and she recommended that all national associations review the report and encourage their own members to do likewise. The Code, she said, had been developed to ensure the safety of seafarers and the cargoes they carried and it was important that agents and brokers are aware of the latest developments.

Proposed FONASBA Valuations Clause

8. **Mr. Jamieson** updated the committee on progress towards the development of the clause. He said the impetus for the project had been the realisation that although many brokers issued their own valuation clauses, there was a significant amount of commonality between them and so a form of words that would be acceptable across the whole Sale & Purchase sector would be useful. Furthermore it was felt that in the current market other parties, such as banks, would welcome a standard clause to use a basis for negotiation. The draft clause would therefore be based on existing international best practice and contain many of the provisions found in those in house clauses already being used. The text of a draft version had been circulated to ASBA and the Norwegian Shipbrokers' Association and having received their approval would also be sent to the Institute of Chartered Shipbrokers whose incoming President (*Alan Marsh FICS, elected 20th October 2011*) was a senior S&P broker. He also said that following concerns about a possible conflict with the provisions of the Hamburg Ship Valuation Method, the **General Manager** had passed same to the German association and the draft had been well received by S&P brokers there. Assuming no objections were raised by ICS, the draft wording would be tidied up and made available to FONASBA for adoption at the 2011 meeting in Sydney. As well as obtaining comment and input from the three major global S&P markets, **Mr. Jamieson** offered a draft copy of the wording to any other association that wished to consider the clause.

9. Member Issues

No issues had been notified to the **Chairwoman** in advance or raised at the meeting.

11. Any Other Business

None

12. Date and Place of Next Meeting

The **Chairwoman** advised that the next Plenary Meeting of the Chartering & Documentary Committee would take place in October 2011 in Sydney, with the date to be confirmed in due course.

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

JCW/12.2010