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WORLD MARITIME UNIVERSITY

Malmö, Sweden

LINER AGENCY AGREEMENTS

By

PATRICIA MWIKALI MBINDYO

Kenya

A dissertation submitted to the World Maritime University in partial
fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE

in

SHIPPING MANAGEMENT

2000

DECLARATION

I certify that all material in this dissertation that is not my work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: **LINER AGENCY AGREEMENTS**

Degree: **MSc**

The dissertation is a study of the principal-agent relationship, with reference to the functions and provisions found in liner agency agreements, the current environment under which liner agents are operating, and ways in which their status can be refined in order to increase their bargaining power and maintain their existence.

A broad description of the general conditions and obligations contained in some liner agency agreements is given and their implications analyzed, as an attempt to expose any existing problems, uncertainties or omissions which may exist in relation to the operation and interpretation of the provisions of the agreements. The primary challenges are perceived as increased liabilities, poor remuneration and the growing competition for liner services within the shipping industry. Existing means to cover the agents' liabilities and attempts to seek better recognition by means of insurance options and member associations are presented. The closing chapter, offers several recommendations for the way forward; greater awareness of the importance of the agency role, improved dialogue between the principal and agent representative bodies, and the diversification of cargo related services, are stressed as the means to ensure the liner agents survival.

KEYWORDS: Agency agreements, Agency associations, Commission, Contract liability, Liner agent, Service diversification

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LIST OF ABBREVIATIONS

BIMCO	Baltic International Maritime Council
CDG	Carl Duisberg Gesselshaft
CSA	Cyprus Shipping Association
EDI	Electronic Data Interchange
FONASBA	Federation of National Associations of Ship Brokers and Agents
FONASBA SLAA	Federation of National Associations of Ship Brokers and Agents. Standard Liner Agency Agreement
ITIC	International Transport Intermediaries Club
NVOC	Non-vessel Operating Company
SGD	Singapore Dollars
SNSA	Singapore National Shipping Association
WMU	World Maritime University

CHAPTER I

INTRODUCTION

1.1 Historical background

In the early days of sea trade, ship owners operating small vessels canvassed for merchandise and loaded their cargo for export to various destinations in the world. They traveled on board their ships from port to port, where they sold their goods and purchased more commodities for discharge at their next destination. As trade became larger in scale and more frequent in occurrence, ship owners increased their fleets and began to employ trustworthy captains to undertake the voyages while they took care of their interests ashore. (Latarche, 1998). Further developments between the late 19th century and mid 20th centuries in world trade saw the discovery of new larger markets and ports. This led to the birth of liner shipping which was designed to offer regular services to designated ports carrying whatever cargoes were ready on the sailing dates (Encyclopaedia Britannica Online, 2000).

In order to increase their market share and improve the efficiency of their ship operations in foreign ports, ship owners began to appoint independent agents to represent their interests at the regular ports of call. Their duties included finding markets for the master's goods, cargo for export and providing crew in exchange for commissions. (Latarche, 1998). History reveals that agreements entered between the ship owners and agents comprised of simple letters and sometimes, verbal agreements without the need for elaborate clauses, terms or conditions. With time however, increased transactions conducted at long distances saw the need for legally binding contracts spelling out the duties and responsibilities of both principal and agent, as well

as the terms and conditions of the agency agreement. These came to be known as Liner Agency Agreements.

1.2 Problem definition

The prevailing view in the agency industry is that there exists a grievous disparity in the corresponding positions of the principal and agent in most parts of the world. It has been stressed that a growing imbalance with respect to the responsibilities and potential liability in favor of the principals has continued to push agents into a vulnerable position.

On a global level, a majority of the independent liner agencies are losing their traditional place in the market due to increased competition. A present look at the liner industry shows a prevalent inclination towards mergers, acquisitions, consolidations and the opening up of principal owned agencies. The shipping industry has also seen the entrance of other players such as the freight forwarders and non-vessel operating companies (NVOCC's) take up an active role in offering ship and cargo related services previously controlled by the liner agents.

The above events may be seen as inevitable market developments, which are not unique only to the liner agent as a transport intermediary. However, another area of concern to the liner agency business has been the increasing demands, risks and liabilities being laid upon them by local authorities, third party interests as well as their principals; liabilities which essentially should be the concern of the principals.

The subject of the ship agent's remuneration has been another bone of contention. The continuous volatility and ever decreasing liner freight rates has had an adverse effect on their commissions earnings, which are based on the freight amount generated through cargo bookings. Given the escalating costs associated with providing efficient services

through the recruitment of qualified personnel and the application of up to date information technology systems, it is hardly surprising that the agents are finding themselves barely surviving.

1.3 Significance of the problem

Liner agents are appointed to provide a service to their principals upon entering into a contractual relationship contained in the liner agency agreements. As well as addressing the functions of both parties, the agreements also carry the general terms and conditions governing their relationship, which include among others, the terms of remuneration, jurisdiction, termination and liability clauses. The individual principals usually draft the agreements and as such, they vary in content and weight. It has been stated that the majority of these tailor-made agreements are imbalanced in favor of the principals, and a lot of criticism against the unfair circumstances has been raised by many concerned parties, among them being the International Federation of National Associations of Ship Agents and Brokers (FONASBA).

The liner agency business is no doubt an essential part of the shipping industry, which has spurned for several centuries, and is bound to remain for many years to come. Liner agents have continued to offer a regional and global network of services to their principals due to their expertise of the local market conditions, and the flexibility they have to offer. It is essential that both parties are placed in a fair position in order to foster a working relationship that is beneficial to both of them.

1.4 Remedial action

Attempts to institute a component of uniformity and hopefully a better understanding of the terms of the agreements by their users, led to the creation of the recommended FONASBA Standard Liner Agency Agreement (FONASBA SLAA) in the early nineties. However, it appears that this document has not been widely accepted as

illustrated by the following statement by Smith (1999 p.9), “Many of you will say that it is impossible to use the FONASBA contract because most principals will regard it as being heavily weighted in favor of the agent:”

In addition to the above efforts, shipping agents all over the world have organized themselves into national and regional associations aimed at promoting their profession and protecting their activities. In this regard, various associations have adopted codes of conduct, standard trading conditions and agency fee scales for application by their members.

The insurance industry has also tailored insurance packages to offer liability insurance to the agents to cover their risks. Despite the steps taken to improve their status, agents are still faced with a lot of pressure to survive.

1.5 Statement of purpose

Having recognized the vital role played by the liner agent as a transport intermediary, the purpose of this dissertation is to carry out an analytical study of the prevailing working conditions between the agents and their principals as contained in the liner agency agreements, with a view to identifying any key areas that require improvement and to offer possible solutions.

1.6 Scope and methodology

The study of the liner agency agreements will be carried out by analyzing certain clauses found in a sample of tailor made agreements, which shall also be compared with those to be found in the recommended FONASBA SLAA.

Nine samples were drawn from five regions, namely South America, North America, Europe, Africa and Asia, as general representatives of the attitudes and expectations of

liner principals located in these regions. They have been re-named and slightly modified so as not to disclose the contracting parties before attaching them to the dissertation as annexes.

Chapter two will provide an account of the main functions and terms of agreement commonly found in a majority of the agency agreements in use today.

Chapter three will give a detailed analysis of some of the clauses contained in a sample of agreements, with a view to highlighting any problem areas that reflect any imbalances and inadequacies.

In chapter four, the author will emphasize the challenges, common problems and disputes faced by both the agent and principal, which may stem from the disproportion of responsibilities in the agency agreements analyzed. Possible solutions to these problems will also be addressed.

Chapter five will look at ways in which liner agents have organized themselves to protect the existence of their profession. The work of some associations, insurance and consultancy service providers will be presented.

Chapter six will provide a summary of findings and make some recommendations geared towards resolving the problems discussed.

1.7 Limitations

The major difficulty encountered while conducting the study, was in obtaining the sample agreements, as they are essentially, confidential documents. Also, a greater number of the agents contacted to give their views on the subject of the agency agreements declined to give disclosed interviews or fill in questionnaires for fear of

jeopardizing the existing relationships with their principals. It is also worth mentioning that the subject of agency agreements has not been given much attention in published books. Hence, much of the research was carried out by use of journals and internet sources as reference material.

CHAPTER II

A DESCRIPTION OF LINER AGENCY AGREEMENTS

2.1 Introduction

This chapter will focus on the contents of liner agency agreements in general. The principal-agent relationship will be defined and the customary terms and conditions governing agency agreements described. The responsibilities of the liner agent vis a vis the principal will be outlined as well. The contents of agency agreements will be discussed in line with the categorization given in the *FONASBA SLAA* (Annex 3).

2.2 Definitions

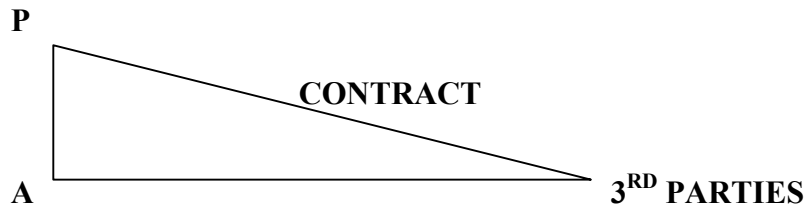
2.2.1 The "Principal"

In the context of shipping services, a "Principal" has been defined as:

"A company or firm or person who has or whose representatives have instructed the Company (agent) and is the owner or charterer or manager of the vessel represented by the Company (agent) and or the carrier under the bill of lading in connection with which services are provided by the Company (agent)." (Annex 11 p. 2)

2.2.2 The "Agent"

Lewis (1992, p.26), in discussing the role an agent defines him as a person who brings his principal into contractual relationships with third parties. He demonstrates this relationship with the following illustration: -



Within the context of this study, the "Liner Agent" is defined as the company of firm or person, who has been appointed to act of behalf of the principal in performing all shore - based technical, commercial and financial functions of ocean shipment on liner terms.

2.3 The agent's authority

The authority given to the agent to act on behalf of the principal can be express or limited depending on the agreement entered into. Stevens & Butterfield refer to three ways by which an agency can be created, namely: -

- I. Agency by *express* authority – Whereby the agent acts per his principal's specific instructions to perform certain things on his behalf. The authority may either be limited to conditions under which to operate, or may allow the agent to act in all ways in furtherance to his principal's business.
- II. *Implied* Agency – An agent when faced with extraordinary circumstances or perils in his usual course of business, may take actions, which he would have no authority to do. For example, an agent who has express authority to take care of the interest of his principal's ship during a port call may order for emergency repairs to a ship in order to avoid undue delays.
- III. Agency by *ratification* – This occurs when an agent engages in an act for which he has no authority whatsoever, but informs his principal after its occurrence and the principal accepts or "ratifies" this action. However, "a contract in excess of authority can be ratified only when the original agent contracted as agent, though in excess of authority." (1981, p. 122)

2.4 Types of liner agency agreements

2.4.1 Tailor-made agency agreements

According to the Merriam-Webster's dictionary (2000), the term "tailor-made" means something "made or fitted especially to a particular use or purpose." The expression tailor-made, in the context of this discussion refers to those agreements that are prepared by the specific liner principals to suit the requirements of the particular trade and scope of the appointed agents' duties.

Many tailor-made agreements may be similar in terms of purpose and general duties of the parties involved, but an individual study and interpretation of each document is likely to reveal remarkable differences in the balance between rights and obligations, benefits, as well as liabilities. They are also unique in terms of structure; some are short, simple and straightforward in language, while others are ambiguous and notoriously long even stretching up to 20 pages. More often than not, these agreements are principal-biased, and leave little potential for re-negotiation. Smith, in *Taking Action by Agreement*, remarks that the prevailing competition between liner agents has led to a situation whereby some are ready to accept almost any terms that their principals may offer them. (1998, p. 33)

2.4.2 FONASBA Standard Liner Agency Agreement (FONASBA SLAA)

As agencies grew in size and numbers and began to form associations, it was felt that there was a need to come up with guidelines giving a balanced share of responsibilities and duties to both parties.

In the late sixties, FONASBA issued the first version of the Standard Liner Agency Agreement followed by a number of revisions in the early 90's. These did not receive much support from the liner principals. According to the BIMCO Bulletin, the reason

behind this is that in general, liner companies prefer draw up their own terms of agreements to suit their specific modes of operation. (FONASBA liner agency agreements, 1993.)

It was not until 1992 that FONASBA together with the ship owners association BIMCO came up with another version, which was approved by the latter's documentary committee in May 1993. The document provides an exhaustive list of duties for the parties involved. In realizing that the various contracting parties may need to make some additions or leave out any inapplicable clauses, this document is intended to serve as a guideline on how to draft a balanced liner agency agreement. (FONASBA liner agency agreements, 1993)

The five page 4th edition ***FONASBA SLAA*** is available upon application from the secretariat of the federation in London.

Regarding the adequacy of the ***FONASBA SLAA***, Smith in *Taking Action by Agreement* comments that,

Although the FONASBA liner agency agreement is a well drafted document, the sponsors recognize that it is inevitable that amendments will be made in order to reflect the circumstances of the parties to the agreement. However, agents and liner principals could do a lot worse than use the agreement as a working draft during negotiation. (1998, p. 33)

2.5 A study of the provisions of liner agency agreements

2.5.1 General conditions

The bilateral relationship between the agent and principal must begin with an agreement and in order for any contract to be binding, there must be an offer and acceptance. The

majority of appointments are by means of a written contract or letter of intent, are based on a specified period of time and address the appointed area of work. Most of the tailor made agreements as well as the **FONASBA SLAA** provide insertions to enter the names of parties to the contract, the date when it takes effect and the territory in which the agent shall perform his duties.

2.5.1.1 Scope of work

Most liner agency agreements cover port and or inland territory work, which includes marketing of the principal's services, handling cargo, handling vessels including those owned by the principal, chartered vessels or in the case of slot space charter agreement with other carriers.

The **FONASBA SLAA** specifies that the performance of activities which fall outside the scope of the agreement shall be addressed in accordance with the local general conditions or established custom of the trade, and will be treated as part of the agreement, "unless otherwise agreed". The duty to inform the principal of the existing local general conditions, customs and practices lies with the agent who shall supply a copy of the same to the principal if it exists. (Annex 3, clause 2.04)

2.5.1.2 Other conditions

Most agreements contain distinct clauses governing the performance of the contract in relation to the following subjects: -

- (a) Conflict of interest: - The agent is expected not to represent other carriers in direct competition with the principal, or to engage in freight forwarding or NVOCC activities.

- (b) Confidentiality: - All aspects of principal's business are to be treated with strict confidentiality.

2.5.2 Duties of the agent

In general, the agent's obligations as outlined in all agreements include, but are not limited to the following: -

- To always obey instructions given by the principal and seek to exercise skill and care in the performance of his duties.
- To abstain from delegating his duties to third parties unless authorized by principal.
- To recommend and or appoint sub-contractors for and on behalf of principal.
- To obtain the necessary licenses, permits and other required authorizations.

2.5.2.1 Marketing and sales

The agent's commercial functions include the duty to: -

- Market his principal's services while maintaining contact with shippers, forwarders, unimodal carriers and other related authorities.
- Quote and negotiate freight rates, as well as announce tariff announcements in accordance with the principal's laid down tariffs.
- Canvass and book cargo in accordance with space allotments.
- Arrange for public relations work including advertising, the announcement of sailing schedules and press releases.
- Provide regular sales market information such as cargo projections.
- Prepare the necessary shipping documentation on behalf of the carrier. These include bills of lading, booking notes, delivery orders, certificates, and cargo manifests among others.

2.5.2.2 Port agency

The technical function of the ship's agent is to protect the ships interests before her arrival at port, during the vessel's stay at port and following her departure. (Francou, 1999). The agency agreements usually specify that the agent shall: -

- Attend to the vessel entry, clearance, berthing, performance and exit clearance.
- Ensure an efficient and proper performance of vessels through the supervision and co-ordination of the activities of port authorities and other appointed sub-contractors.
- Make necessary arrangements for the safe loading and discharging of cargoes as well as attend to transshipment cargo.
- Arrange for bunkers, repairs, husbandry, crew changes, ships stores, spare parts, cash funds to vessels' commands and other necessary provisions.
- Handle claims, Protection and Indemnity insurance matters, surveys and general average matters as instructed.
- Update the principal on his vessels' performance and port working conditions.
- Handle the movement of full and empty equipment, ensuring the maintenance of an efficient container control system.
- Arrange for stuffing and de-stuffing of LCL cargo within port area and the ICDs.
- Arrange for the proper storage of units as well as their maintenance and repairs.

2.5.2.3 Accounting and finance

The agent's financial functions as expressed in agency agreements, typically include the duty to:

- Prepare periodic financial statements.
- Check vouchers for services rendered, prepare proper disbursement accounts for all vessels and advice of any amendments to local port tariffs and charges.
- Calculate freights and other charges in accordance with the principal's tariff conditions.

- Collect freights and other monies owed to the principal and make remittance of the collections at period intervals as per the principal's requirements.
- Advise the principal of existing customary credit terms and other arrangements in his territory for his necessary authorization.

2.5.3 Duties of the principal

The principals' responsibilities as outlined in both the *FONASBA SLAA* and some tailor made agreements are similar, and include the duty to: -

- Provide documents and stationary he specifically requires for use by the agent. These normally include custom designed bills of lading, delivery orders etc.
- Give adequate information on scheduling, ports of call, tariffs, and policy decisions that may affect the port and sales activities.
- Provide funds to cover disbursements, unless the agent has sufficient money from freight collections.
- Indemnify the agent against all claims, charges, damages and expenses that he may incur in connection with fulfillment of his duties under the agreement, during its duration as long as acts leading to such damages are not by reason of his misconduct or negligence.
- Indemnify and reimburse the agent for bonds, guarantees or securities to customs or other statutory authorities in connection with cargo movements.

2.5.4 Remuneration

The agent is entitled to remuneration for the performance of his contractual duties, which is payable in form of commission, agency fees or other payments, as outlined in the fees and commissions schedule covering various services. These are normally broken down to cover: -

- Commission for export and import cargoes.
- Booking and container handling fees.

- Ancillary charges collected by agent on behalf of the principal, such as demurrage.
- Fees for claims processing and settlement of other duties that the agent may be called upon to perform.

It must be noted that the commission fee which is a percentage of the freight rate applicable for export and import cargo as well as other lump sums and fees are regulated, but negotiable and differ from agreement to agreement.

Additional conditions and costs payable by the principal differ from one agreement to another, but generally comprise the following: -

- Terms of review to the fee structure.
- Currency variations. The *FONASBA SLAA* takes into consideration the effects of tariff and local currency variation exceeding 10% (5.04)
- The matter of any additional income collected by the agent in form of commissions or rebates. Some agreements require these to be credited to principal's account.
- Part of the administration and communication costs incurred by the agent in the course of his work payable on a monthly average amount, costs or lump sum basis.
- Agents' travel and accommodation expenses for authorized travel.

2.5.5 Duration

Agency agreements may terminate either due to the lapse of the contract period as agreed, by operation of the law or by the act of either party. Termination of the contract by either party is to be conveyed by registered/recorded mail. A specific notice period of between 3 to 6 months is required in most of the tailor made agreements.

The ensuing motives for untimely terminations that are common to a great number of the agreements in use are the: -

- Negligence or willful misconduct on the part of the agent.
- Suspension or withdrawal of the principal's service to the agent's territory.

Other reasons common to tailor made agreements but excluded in the **FONASBA SLAA** include the: -

- Bankruptcy of the agent.
- Undue withholding of principal's funds by the agent.
- An unfavorable political or economic climate in agent's territory.
- A major change in management or control of the agency.

2.5.6 Jurisdiction

Arbitration is often a preferred means of settling disputes between the principal and agent as a substitute for lengthy court procedures and costly litigation. Typically, most of the agreements include an arbitration clause. The choice of the arbitration location is often open to agreement between the parties, but more often than not, the principal dictates the venue which is usually his place of domicile. The **FONASBA SLAA** nominates London, but allows the choice of an alternative venue. (7.01)

2.6 Conclusion

Today there are hundreds of independent liner agents operating from many countries where sea transport takes place. While it is difficult to ascertain how many liner agency contracts are based on the recommended FONASBA agreement, and how many are tailor made, it will be beneficial to examine and identify the varying provisions contained in the various agreements currently in force in the ensuing chapter.

CHAPTER III

ANALYSIS OF CERTAIN PROVISIONS OF SOME LINER AGENCY AGREEMENTS CURRENTLY IN USE

3.1 Introduction

The agency relationship is created when one person or entity (the principal) assigns another (the agent), to deal with third parties on his behalf. The terms and conditions of this relationship are embodied in the agency contract or agreement, which is legally binding to both parties and is governed by the law of the agency (Encyclopaedia Britannica, 2000)

The agency contracts in the liner trade, commonly known as liner agency agreements are based on the above principle. Although they generally define the terms and conditions as well the duties of both parties, their contents vary according to the scope of work, geographical area, and the comparative bargaining power of the two contracting parties. (Smith, 1999).

This chapter will give a critical account of certain clauses, which may be seen to place the agent in an unjust position in relation to the principal. A total of ten agreements, including the *FONASBA SLAA*, which are included in the appendices, will be studied. They have been allocated titles such as the *Asian* or *South American* agreements, to denote their origin without disclosing the individual parties to the agreement.

3.2 General conditions

3.2.1 Conflict of interest clauses.

In fulfillment of his fiduciary duties to the principal, “the primary duties of the agent to the principal are those of care, obedience and loyalty. Specifically, he must act solely for the interests of his principal and refrain from engaging in undisclosed interests adverse to those of his principal.” (Encyclopaedia Britannica online, 2000).

In common law countries, the principal is obliged to provide the agent with a regular opportunity for service, and has a duty to assist and not to inhibit the agent’s fulfillment of such a service. (Encyclopaedia Britannica online, 2000).

It is not surprising to note that principals have been very prudent to include a clause which forbids the agent from putting himself in a position which could jeopardize their interests, especially in the prevailing competitive environment of liner shipping. Clause 2.02 of the *FONASBA SLAA*, as well as the *African* agreement (Annex 1), require the agent to abstain from representing other carriers or engaging in activities which are in direct competition with the principal without his written approval, but also add that the approval “shall not unreasonably be withheld.” (2.02). Of this specific clause, Smith (1999) observes that agents are content to accept such a provision, which according to him seems reasonable.

Similarly, all tailor-made agreements carry a conflict of interest clause. In the *South Asian* (Annex 8, clause 2.2), and *Indian* (Annex 4, clause 32 c) agreements, the agent is forbidden from representing other direct competitors or engaging in any business which may be in direct conflict with the principal’s interests without his written approval. The *Weser* (Annex 9, clause 3.02) and *North Continental* (Annex 6, clause 3) agreements,

however, apply the words "direct and indirect", whilst the *North American* (Annex 5) adds in clause 9, that upon the termination of the agreement, the agent must not contact or continue to deal with any customers acquired in the course of his representation. Not only does the application of the words "direct or indirect" in the above example put an unreasonable demand on the agent, the principal does not give a counter clause indicating his willingness to accommodate the agent's interest with a similar undertaking.

Of the agreements studied, only the *FONASBA SLAA*, the *African and Asian* agreements include a fair provision, stating that the appointing principal undertakes not to appoint any other party to perform services already defined in the agreement within the agents territory. Granted, it is not expected that all agreements will be based on the requirements of common law, but the attempt to impose one sided demands as demonstrated in some of the tailor-made agreements, creates an unfair situation to say the least.

3.2.2 Delegation clauses

Lewis (1992), points out that the agent, having been appointed to carry out the agency work himself has no authority to delegate his work to third parties, a duty often referred to as "delegatus non potest delegare". The reason behind this position is that the agency-principal relationship is not only a personal one, but is usually one that calls for discretion. He continues to say, "delegation of such authority will be a breach of the confidence reposed in the agent except under the following cases: -

- a. Where delegation was in contemplation of the parties at the commencement of the agency.
- b. Where the appointment of a sub-agent is necessary for the proper execution of his work.
- c. If delegation becomes necessary as a result of a sudden emergency.
- d. Where delegation is sanctioned by trade, custom or usage.

- e. Where the work will not call for the exercise of any discretion by the sub-agent.
- f. Delegation is also possible where part of the work requires a special skill and the agent does not have that skill (1992, p. 12)

Regarding delegation, clauses 3.02 and 3.03 of the *FONASBA SLAA* as well as the *African* agreement state, that the agent may in consultation with the principal recommend and or appoint on the latter's behalf and account sub-agents, stevedores, watchmen, tallymen, terminal operators, and all kinds of suppliers if required. Further, according to clause 3.04, the agent is not to be held responsible for the sub-agents negligent acts, unless he failed to exercise due care in the selection and appointment of the sub-agent or sub-contractor.

In contrast, clause 2.8b of the *South American* agreement (Annex 7) stipulates that "the agent shall indemnify and hold principal harmless against and from any and all damages and claims arising out of the activities of such sub-agents (whether or not consented to by principal)". The *Weser* agreement allows for delegation of the agent's duties subject to the principal's approval, but also adds, "such agent, sub-agent or sub-contractor is considered to be the agent's servant." (3.03)

The master-servant relationship defined in the above example is a clear indication that the agent is to remain vicariously liable for the sub-agent's tortious conduct committed in the course of his employment, irrespective of any personal fault of the appointing agent.

Various questions may arise from the above scenario:

- i) Is the agent to await written confirmation from his principal even when faced with emergency situations?

- ii) Does the typical agent possess the specialized skills and capacity to perform all duties that are ordinarily subcontracted to 3rd parties such as terminal operations, supplies and provisions, trucking etc?
- iii) Do such strict instructions leave any room for the agent to exercise implied authority and due care, or do they erode the trust bestowed upon him while attending to the principal's matters?
- iv) What is the purpose that the principal would insist upon giving his written approval for appointment of sub-agents and sub-contractors, if he is not willing to share the blame for losses arising out of their mistakes?

In discussing this topic, Smith (1999) says that although it is not strange to come across agreements permitting the agent to delegate his duties to sub-agents, in such cases, the agent remains responsible for the acts of the sub-gents at all times. Further, he rightfully comments that, considering that these third parties are unknown to the principals, it is only to be expected that they will insist on this particular requirement.

In principle, the express authority to delegate does not necessarily lead to privity of contract between the principal and sub-agent. However, where the principal has given written approval, it seems logical that that he should bear part if not all the responsibility for negligent acts or default of the sub-agents and sub-contracts as long as due care was exercised by the agent whilst recommending and supervising them. According to Stevens & Butterfield (1991), in cases whereby the principal has firmly accepted the appointment of a specific sub-agent, it could be said that a privity of contract has been created between them. The sub-agent could in effect be considered as an agent.

3.3 Duties of the agent

3.3.1 Documentation

The charge to attend to all documentation matters on behalf of the principal rests with the agent, and includes the issuance of bills of lading, delivery orders, certificates and the preparation and lodging of cargo manifests.

Clause 4.26 of the *Weser* agreement requires the agent to issue bills of lading and other documents as may be required. The *West European* agreement in clause 3.1.14 (Annex 10) asserts that "unless otherwise specifically authorized by the Line in writing, the agent shall under no circumstances release bills of lading otherwise than upon shipment of export cargo".

What qualifies as reasonable is only a matter of opinion and furthermore, an agent could effect instructions requiring him to issue documents under circumstances which may not be viewed as legal or reasonable by a court of law such as claims from shippers and consignees of undelivered cargo. If it is of any comfort, the *South Asian* agreement (4.4) offers indemnity to the agent for damages that he may suffer while following his principal's instructions, provided they do not arise out of the agent's negligence. (4.4)

Fortunately, some agreements specify that bills of lading may only be issued for loaded cargoes and according to accepted trade practice. (*South American*, 2.3). A good agent may always refer to this clause when faced with uncertainty. Likewise, the *FONASBA SLAA* and *African* agreement in clause 3.05 assert that the agent will always strictly observe the shipping laws and regulations in his country of operation.

3.3.2 Accounting and finance

Part of the agent's accounting functions is the duty to settle, on behalf of the principal any outstanding disbursements to suppliers, port authorities and other service providers,

incurred on account of the principal's vessel operations. Usually, the agent is responsible for collecting and remitting freight and other surcharges due to the principal. These two functions are addressed in different ways according to the individual principal's policy.

The *South Asian* agreement carries a clause that should be of concern to any agent. In it, the agent accepts to advance for his principal all local expenses, following which he shall be reimbursed after the principal has received and approved his monthly statement (7.4). In the ensuing clause, the agent accepts to pay his principal a delinquency penalty at the rate of 10% for the overcharge on the disbursement accounts or short collection on revenue accounts. The said penalty amount is not reversible even after a corrective advice is issued, without the principal's written consent and at his own discretion.

The *Weser* agreement (4.44), stipulates that freight collections are to be remitted as per the principal's instructions. The following clause has been inserted: -

Pay in case of delayed remittance/payment to the principal, interest at the rate of 3% above the discount rate of the Deutsche Bundesbank valid the freight and other monies have been due until the date of delayed remittance/payment.

In the above example, the agent is not directly authorized to retain money even for the performance of his principal's financial obligations, yet it imposes a penalty for delayed remittance. It is therefore astonishing to note that yet another clause requires the agent to pay disbursements to sub-contractors not later than six weeks following each vessel's departure, as long as funds are available. (4.47).

It is disturbing to note the prerequisites of some of the examples discussed above. While the agent is not clearly authorized to retain funds to cover the principal's debts, no commitment is given by the principal to advance him the required funds on a timely basis. Further, the *South Asian* agreement, while imposing a penalty for incorrect

statements, fails to address the matter of paying interest to an agent who uses his own funds for the benefit of the principal.

It is worth saying that there are some reasonably drafted agreements such as the *African* agreement and *FONASBA SLAA*, which authorize the agent to utilize funds from freights collected as long as the principal is kept informed of his cash position on a regular basis. (3.40). The *North Continental* agreement requires the agent to collect and credit freight collections into the principal's account 30 days after vessels sail, after making deductions for commissions and expenses. (4b).

3.3.2.1 Credit terms

In a bid to secure business support from shippers, agents and ship owners often consider offering credit terms to shippers, in the context of issuing "freight pre-paid" bills of lading, where freight has not been collected. Where the creditor settles the outstanding freight within the stipulated credit period, everyone concerned will be content. (Smith, 1999). The critical question then becomes who between the agent or principal is expected to take up the responsibility of pursuing payment or bearing the consequential loss in case of defaults on payments.

It would be useful to examine the agent's position in relation to the principal, in a case whereby a creditor fails to settle the amounts due to the ship owner under the following scenarios;

- i) When the agent is required to obtain express authority to grant credit.

The *FONASBA SLAA* in clause 3.45 provides that: -

If the agent is required to grant credit to customers due to commercial reasons, the risk in respect of outstanding collections is for principal's account unless the agent has granted credit without the knowledge and prior consent of his principal.

The *African* agreement (3.45), which is as good as a duplicate of the *FONASBA SLAA* at this point, is altered in favor of the principal to read that, "The risk of outstanding collections is for the agent's account and the agent will exercise due diligence."

Likewise, in the *Weser* and *West European* agreements, the agent is expected to obtain his principal's authorization before granting credit to shippers. The responsibility and consequences for any unpaid freight remain solely with the agent. (4.45 and 4.13). It seems that these two agreements give an unfair status to the agent; even though the principal expects to be the sole decision-maker as to when credit may be applied; he also attempts to exonerate himself in pursuing a creditor who has failed to meet his obligation!

ii) When an agent who is not authorized to offer credit but undertakes the risk.

The responsibility to collect the freight from the shipper lies with the agent. Smith (1998) refers to this as a "del credere" agent, who offers a guarantee in exchange for a special extra commission. The *North American* agreement in clause 8 reads that the decision to grant credit is entirely up to the agent, who shall remain responsible for the collection of outstanding debts as well as any consequences arising thereof.

iii) When there are no distinct instructions to the agent whether or not he is authorized to grant credit.

The *Indian* and *Asian* agreements make no specific provision on the subject of credit terms and conditions altogether, hence the agent is not clear of his legal position on the matter.

From a strict legal point of view, an agent who acts without express instructions laid out in the agreement is in breach of the agency contract. Smith (1999 p. 7), points out that such an agent may argue that credit terms are part of the customary trade practices in his territory, and that his position as agent warrants him the authority to do what is required

to obtain cargo. Stevens and Butterfield (1981, p. 122), further suggest that the agent has implied powers bestowed upon him, to do everything necessary for the performance of any expressed authority he may have received from the principal

With this in mind, it may be considered reasonable for the agent to allow credit in order to canvass for cargo bookings on his principal's services. However, in order not to create uncertainty and adverse consequences for both parties in case of default, there is a need to ensure that the matter of credit is well defined within the agreement.

3.4 Indemnity clauses

3.4.1 Agent's indemnity

Certain clauses found in almost all tailor-made agreements hold the agent liable for all losses incurred by the principal resulting from acts, omissions, default, mistakes, errors or negligence of the agent or his servants. Clause 28 of the *Indian* agreement, for example, maintains that the agent shall indemnify and hold the principal harmless, from all claims, penalties, suits, losses, costs and expenses resulting from partial or full default of the agent in performing his duties. The *South American* agreement (7), requires the agent to indemnify the principal for fines, civil penalties, delay to any vessels, and damage to cargo resulting from his negligence in supervising stevedores and terminal operators.

The issue of when the agent or his employees may be said to have acted in a negligent manner may be difficult to resolve. Smith, while discussing the subject of principal biased agency agreements cites an onerous clause, that required an agent who disclaims responsibility for losses or damages, to bear the burden of proof. He properly concludes that this clause is too burdensome on the agent, as it reverses the burden of proof that is normally required.

According to the **FONASBA SLAA**, the agent is to “indemnify the principal for any fines, penalties, expenses or restrictions that may arise” owing to agent’s failure to adhere to shipping laws and regulations of the country. (3.05).

3.4.2 Principal’s indemnity

The indemnity provision found in clause 4.04 of the **FONASBA SLAA** and **African** agreement provides that the principal, shall indemnify the agent against any claims, losses or expenses which may arise from the negligent acts of the sub-agent or sub-contractor, as long as the agent exercised care in their selection and appointment: -

A careful examination of the principal’s duties found in the **Weser** agreement reveals a clause worded exactly as the one found in the **FONASBA SLAA** as shown above. (5.05). The **Asian** and **North Continental** agreements do not carry any indemnity clauses.

It must be noted that unlike the indemnity clauses found in the sample of agreements, it is only in the **FONASBA SLAA** and **African** agreements where the agent and principal stand in a reasonably fair position. This argument could be taken further to include the doctrine of *respondeat superior*, by maintaining that the principal and agent stand in a master-servant relationship, hence the master must always be held vicariously liable for the servant’s tortious conduct committed within the course of his employment. Under this principle, the master’s vicarious liability extends in some instances, even to claims arising from the servant’s intentional torts. (Encyclopaedia Britannica, 2000).

3.5 Remuneration

The agent’s remuneration in form of commission is payable as a percentage of the freights charged and collected. The percentage applicable is subject to negotiation between the two parties, although the rate ranges between 2 and 5 %.

The remuneration schedule of the *FONASBA SLAA* gives a remuneration breakdown for export cargo, import cargo, fees for booking only, container handling and ancillary charges collected by the agent on behalf of the principal such as demurrage.

Further, in order to share some excessive administration and communication costs incurred by the agent in the course of his work, the principal undertakes to pay the actual or part of the expenses based on average costs or on lump sum basis. All agents' travel and accommodation expenses for authorized travel shall be covered in full by the principal.

Separate fees for claims processing and settlement undertaken by the agent when required by his principal shall be remunerated separately. Likewise, other duties that the agent may be called upon to carry out shall be remunerated based on the express understanding between the two parties.

Clause 5.01 holds that any fees expressed in monetary units in the attached schedule will be subject to review every 12 months and adjusted in accordance with the recognized cost of living index as is published in the country of the agent.

Clause 5.04 provides that should currency variations between the tariff and local currencies exceed 10%, then the calculation of remuneration shall be adjusted in accordance with any currency adjustment factor existing in the trade.

The tailor made agreements on the other hand, address the question of remuneration in a narrow and inadequate manner by simply referring to attached rate schedules showing the remuneration rates. A few examples on the levels of commissions and other fees have been compiled as follows: -

1. Asian (Appendix I)

Description	Rate
Outward cargo	5% gross frt.
Transshipment cargo	-
Inward cargo	5% gross frt.
Handling fee/box	\$ 15/box
Equipment control	\$ 10/box

Other expenses/provisions

Shipping documents e.g. bills of lading on account of principal.

2. West European (Clause 5)

Description	Rate
Outward cargo	5% nett frt.
Transshipment cargo	-
Inward cargo	2.5% nett frt.
Handling fee/box	US 20/box
Equipment control	US 10/box

Other expenses/provisions

Advertising costs at agent's account.

3. Weser (Addendum A)

Description	Rate
Outward cargo	5% nett frt.
Inward cargo	-
Crossbookings	2.5% nett frt.

Other expenses/provisions

Documents and stationery to be provided by principal. Advertising on principal's account.

4. North Continental (Clause 0.1 - 0.6)

Description	Rate
Outward cargo	5% gross frt.
Inward cargo	3.25% gross frt.
Collection fee	5%

Other expenses/provisions

Advertising costs on principal's account.

5. South Asian (Appendix 1)

Description	Rate
Outward cargo	5% nett frt.
Transshipment cargo	\$ 25/full box
Inward cargo	2.5% nett frt.
THC collection fee	2%
Equipment control	\$ 10/full box

Other expenses/provisions

Travel and accommodation, international communication, courier and advertising costs on account of the principal.

6. Indian (Page 15)

Description	Rate
Outward cargo	5%
Transshipment cargo	\$ 15/box
Inward cargo	2%
Freight collection fee	0.50%
Equipment control	\$ 14/box

Other expenses/provisions

Not specified

In a balanced contract, the rights of the agent should impose corresponding duties on the principal. Likewise, duties of the agent should give corresponding rights to the principal. Lewis (1992, p. 13), summarizes the basic rights of the agent as follows:

- i) Right of re-imbursement for reasonable expenses incurred by him in the course of performing his duties.
- ii) Set-off. Should the principal bring an action against him for breach of contract, the agent should be able to exercise his right of set-off for any sums due to him in form of commission or indemnity expenses.
- iii) Lien. Subject to certain conditions, the agent should be in a position to exercise a lien on the principal's goods in his possession in case the principal has failed to pay his commission or indemnity costs as agreed, until the matter is settled.
- iv) Action for agreed commission or remuneration. Upon the performance of his duties, the agent is entitled to receive his full commission.

In the tailor-made agreements discussed, there is no mention of additional fees for services such as collection of demurrage, nor reference to rate reviews in case of increased costs or inflation. Further, no provision in the tailor-made agreements gives the agent the right to exercise a lien on the principal's assets should the latter fail to settle the agent's dues.

3.6 Duration and notice period

Like any other contracts in use in other business practices, the agency agreement can terminate by either party giving the other a written notice as stipulated in the agreement.

Following are some examples: -

	Agreement	Duration	Notice period
i)	<i>Indian</i>	indefinite	180 days
ii)	<i>North American</i>	indefinite	60 days
iii)	<i>African</i>	indefinite	3 months

The shortest notice period of 3 months may work against the agent who has invested a lot of resources in the agency infrastructure, and worse still if he only represents one principal.

3.7 Termination for breach of the agreement

Termination of the agreement by either party, prior to the expiry of the notice period could occur under various circumstances, for instance: -

- i) The withdrawal or cancellation of ship owner's services for economic reasons, or due to a change of company policy or for other reasons beyond either party's control.
- ii) Due to the willful misconduct on the part of the agent.

All agreements analyzed contain some of the above and other circumstances that could lead to immediate termination as well as the consequences for such an action. The ***FONASBA SLAA*** addresses this matter in great detail:

- 1) Clause 6.02 holds that,

If the agreement for any reason other than negligence or willful misconduct of the agent should be cancelled at an earlier date than on the expiry of the notice given under clause 1.01 hereof, the principal shall compensate the agent. The compensation payable to the agent shall be determined in accordance with clause 6.04 below.

- 2) In a case whereby the principal withdraws or suspends the service for any reason, the agent may also opt to withdraw from the agreement “without any prejudice to its claims for compensation” (6.03)

3) According to clause 6.04, the latest version of the general conditions or national law on termination of agency contracts shall apply. The clause proceeds to give a basis of compensation where such statutory law or conditions do not exist as: -

A monthly average of commission and fees earned during the previous 12 months or if less than 12 months have passed then a reasonable estimate of the same, multiplied by the number of months from the date of cancellation until the contract would have terminated in accordance with clause 1.01.

4). In addition to the above provisions, the principal undertakes to take into account the gross redundancy payments due to the agent's employees as a result of the premature cancellation of the agreement.

Finally, clause 6.05 of the **FONASBA SLAA** states that the agent has a general lien on amounts due to the principal in case of any undisputed sums due to the agent, which may remain unsettled following a cancellation of the agreement, provided of course the termination was not due to his willful misconduct.

No doubt, the above provisions give the agent adequate protection ensuring that he is not left standing on the road when the principal suddenly decides to pull out of their relationship.

It is now worth looking into how principal biased tailor-made agreements, as they are often called, treat this subject.

Clause 7.02 (a – f) of the **Weser** agreement provides that the principal has the liberty to terminate the agreement, “without prejudice to all other legal rights and remedies to which the principal may be entitled in relation to the termination of this agreement”, under the following circumstances: -

- 1) If the agent is declared bankrupt; asks for a moratorium or has engaged in special arrangements with his creditors.
- 2) In case of any form of action taken by any government or public authority in the agent's country.
- 3) Failure on the agent's part to remit principal's monies within 30 days following the principal's written demand notice, unless the agent can prove the situation was due to an error.
- 4) In case of a major change in the agency ownership or control, or even a change in personnel handling part or all of the principal's matters.
- 5) If the agent commits any act or omission be it intentional or not, which constitutes a major breach of the contract.
- 6) Failure on the agent's part to remedy any breach of the contract, which has been brought to his attention within a period of 30 days.

On the matter of compensation, clause 7.05 of the same agreement reads that "notwithstanding any local statute or national law to the contrary the agent will refrain from claiming any indemnity or compensation or the like if this agreement for any reason should be terminated." A similar provision is found in the *Indian* agreement (33), whereby the agent is not entitled to any compensation in form of goodwill, investment in agency infrastructure, or whatever title may deem fit, save for earned commissions.

The above listed reasons are not only too stringent, but they also leave room for various interpretations with regard to what might constitute a major breach or what may be termed as unfavorable conditions of operation in the agent's country, warranting the withdrawal or cancellation of services. To add insult to injury, a preceding clause 7.03 of the *Weser* agreement requires a terminated agent to continue performing the duty of collecting and remitting outstanding freights and other dues until such power is revoked.

There is no mention of how the agent will be remunerated within a contract that no longer exists!

A fundamental flaw in these kind of imbalanced agreements is that they omit the agent's rights to terminate the relationship if the principal is faced with any of the stated circumstances. No doubt, an agent who accepts the inclusion of such provisions in the agreement, needs to obtain a sizeable professional insurance cover and hope that all things remain constant so as not to suffer the arduous effects following his principal's decision to pull out of the agreement.

3.8 Jurisdiction and arbitration

The place of arbitration is of utmost importance to both parties to the agreement, as the applicable laws determine the outcome of disputes especially those pertaining to the protection of money.

English law governs the **FONASBA SLAA**, so any arising disputes are to be referred to London for arbitration. Each party may appoint one arbitrator within 24 days, failing which the decision of one arbitrator shall apply. Should both parties agree to appoint an umpire, his decision is to be considered as final. Alternatively, disputes may be referred to another place as agreed, and shall be subject to the laws and procedures of that land. If the alternative clause is not filled in, it shall be taken to mean that the conditions stipulated in clause 7A shall apply.

The **South American** agreement, in clause 17.00 indicates that disputes shall be referred to New York for arbitration, while the **North American** agreement nominates Houston, USA as the arbitration venue. The **Weser** Agreement is to be governed and construed in accordance with the laws of Germany, and only allows arbitration to be conducted in accordance with the German Maritime Arbitration Association. (9.00, 10.00).

Considering that agents are based and operate from all parts of the world, the limitation of the laws governing the agreement to the principal's base as in the case of the *Weser* and *American* documents, creates unfair circumstances.

3.9 Conclusion

This chapter has determined that tailor-made agreements carry differing demands but in general, almost all the clauses analyzed apportion onerous conditions to the liner agent. The consequences arising out of the use of these agreements create obstacles and could lead to difficulties, which will be discussed in the following chapter.

CHAPTER IV

THE LINER AGENTS' MARKET PLACE: Common problems and challenges

4.1 Introduction

A recent survey carried out by the Ships Agent and Broker magazine enquired how principals viewed their agents.

One of the respondents was quoted saying; “Everything depends on the agent. But it is not our task to teach them how to do their job if they do their job badly.” (Ship agents market place, 1998 p. 90.).

Other industry critics may hold a different point of view:

Ship agents are soft targets. Reputable principals will insist that they don't dump on their agents, and most of them don't. But there isn't a shipowner borne who hasn't at some time or other been tempted to leave the agent to carry the can when something goes wrong. (Soft targets, 1998, p. 5)

This chapter will highlight the working environment of the liner agents, their challenges and common problems encountered, seek to establish the possible reasons behind these problems and suggest ways to overcome them.

4.2 Duties of the agent

4.2.1 Marketing and sales

Bureaucracy - In their day to day role of canvassing for cargo to fill in their allocated space, agents often experience a common problem of bureaucracy while dealing with their principals, such as the unwillingness on the part of the principal to match market rates and other customer requirements. Sometimes, principals are notorious at rejecting canvassed cargoes for a whole range of reasons, just as long as they have met their overall loading capacities on the round leg.

One such example cited by ITIC (What price steel? 1997, p. 3), describes a case whereby, a German Liner Agent undertook to load 10,000 Mt. of steel from Hamburg to China in three separate loads of 5,000, 2,000 and 3,000 tons.

The agent had put forward details of the booking to the line, and believed that the line had agreed to carry all 10,000 tons at the same rate and therefore confirmed the booking to the shipper. The first 5,000 tons were carried without problem, but the line refused to carry the second and third parcels at the same rate due to a rise in the market. Unfortunately, the lines telex did not make it clear whether the line had accepted the first 5,000 tons at the rate quoted, or whether the rate applied to the full 10,000 tons.

In the above example, the liner company loaded the balance of the consignment at a higher freight rate with the freight difference being settled by the agent.

Port call cancellations - Liner operators have been known to divert their vessels from the regular routing. In some instances, they allow some scheduled ports to exceed their allocated slots for commercial reasons; it may be that the preferred cargo will fetch a higher freight. This results in a reduced allocation for another agent in the next port of call, who had canvassed enough bookings to fill his allocation as previously advised.

An agent faced with such a situation not only loses part of his expected income but is left to deal with the shippers who may not be interested in giving more business in the future. Often, agents are forced to roll over the shut out cargo to the next vessel call without informing their clients.

A consequence of this action could be claims for the late delivery of cargo. The principal's stand would probably be that the agent should have complied with the instructions to reduce his bookings, despite having been instructed whilst cargo was already at port awaiting the vessel's arrival!

Unrealistic targets – No doubt the agent and principal share the same goal, to maximize cargo-booking capacity in order to increase their earnings. Does the principal always consult carefully with the agent on the needs of the market before positioning larger vessels, increasing slot allocations and increasing the frequency of calls? Such decisions made by the principal or consortia without involving the market intelligence of the local agent may lead to increased pressure and could result in the former losing his representation on grounds of lack of performance.

4.2.1.1 The principal's perspective

At this point, it would be useful to identify some of the problems experienced by principals in their dealings with their agents, as reported by the Ships Agent and Broker (Ship agents market place, 1998, pp. 91-95)

Agent's lack of commitment - It has been said that sometimes, the independent agent is not too keen on following his principal's instructions on cargo types and rates to be applied, and is sometimes seen to be more loyal to the local clients than his own principal. (Ship agents market place, 1998, p.93).

Inaccurate market information - "In general, agents are not prepared to provide shipowners' with statistical data regarding the local market" was the response from one principal, Alianca. (1998, p.93). Do agents sometimes offer misleading and poorly researched market analysis, which yield no fruit in the end?

Poor communication - Important matters are not reported to the principal on time. And lousy local marketing can ruin a principal's business", as reported by National Shipping Company of Saudi Arabia. (1998, p.93)

Unfavorable local conditions -More often than not, the liner operators are forced to cancel ports of call or divert cargo due to circumstances beyond their control. Congestion and unfavorable port and inland transport conditions leave them with no choice but to suspend the service until the conditions improve. Other times, the operator has to take a decision to divert his attention to other more productive and profitable territories.

4.2.2 Documentation

Sound shipping practice demands that cargo should only be released to the rightful owner or consignee against the presentation of the original bill of lading. Studies carried out by the International Transport Intermediaries Club reveal that the leading cause of claims against liner and port agents happens to be the delivery of cargo without bills of lading. (Ten golden rules for the delivery of cargo, 1997 p. 1).

As regards the issuance of bills of lading for export purposes, sound-shipping practice again requires that the agent issue a correct bill of lading indicating the correct cargo quantities and circumstances of the shipment, including the actual date of loading. In some instances, carriers and agents offer pre-dated or post-dated and "clean" bills of lading to shippers for cargo not actually loaded, or for damaged cargo in exchange for

letters of indemnity issued by the receiving parties. The reasons for such actions are commonly given as: -

- i) The need to comply with the requirements of a letter of credit.
- ii) In the case of expired export licenses or import quotas.

All the agency agreements analyzed in this study show that agents are expected to comply with their principal's instructions at all times, within reason. Agents, are however, misguided in believing that as long as they are acting upon the instructions of their principals by issuing incorrect documents against letters of indemnity, they are not personally liable for fraudulent behavior.

A case of 1998 between the Standard Chartered Bank versus Pakistan National Shipping Line and its agent Seaways Maritime, London, demonstrates that even though most agency agreements require the agent to comply with his principal's instructions, he is by no means immune from the legal consequences of his actions.

The agent in the given example acted upon his principal's instructions to issue and pre-date a bill of lading by six weeks to the shipper for a cargo of bitumen from Bandar Abbas to Vietnam. The high court judge, Justice Cresswell in his ruling awarded to the bank damages estimated at \$ 1.2m with interest. He is quoted as saying that "Antedated and false bills of lading are a cancer in international trade." In rendering his judgement, Justice Cresswell did not distinguish between the degree of liability of the shipper, the carrier and the carrier's agent and ordered each party to bear one third of the loss." (ITIC, 1999, p. 35).

The latest developments in this case are that the court of appeal, presided over by Lord Justice Ward dismissed an appeal lodged recently by the defendant's, in a bid to have the Standard Chartered Bank share part of their loss. (Pearson, 2000).

4.2.3 Accounting and finance.

4.2.3.1 Credit

Proper shipping practice requires that freight be collected in advance in order to reduce the risk of debt. There are exceptions to this rule when: -

- a) Agents issue “freight pre-paid” bills of lading prior to collection of the freight, thus offering credit to the shipper.
- b) Agents issue “freight-collect” bills of lading, leaving the duty to collect the outstanding amount with the agent at the port of destination upon delivery of the cargo.

The previous chapter revealed that some agreements allow the agent to grant credit to customers with prior authorization from his principal. Where approval was granted, any risks relating to uncollected freights will be on the principal's account. Under the same subject, the positions of a “del credere” agent, one who has express authority to grant credit and another who has no distinct instructions whether or not he is authorized to grant credit were examined. As long as the agent adheres to the strict instructions given to him, he is unlikely to suffer any consequences in case of default; it is, however, important for him to secure his principal's authorization in writing.

Agents have run into financial and legal difficulties upon giving credit without authorization, and found themselves settling the freight owed to the carriers while pursuing legal channels to recover the same.

Smith (1999, p. 8), while discussing the agents' liabilities illustrates the above by referring to a case called Cho Yang Shipping (liner company) versus Coral (UK) Ltd. (shipper) involving the shipment of 20 containers of sugar from two German ports to Dubai. The entire transaction involved a chain of intermediaries. The liner company, EOS issued a “freight pre-paid” bill of lading before collecting the freight from an intermediary named Interport Speditions, who had, in fact collected the total freight

from the shipper's forwarders, Nortrop. The Court of Appeal ruled that the shipper was not obligated to settle freight to the carrier, as he had entered into a contract with his forwarders only, and not with Cho Yang Ming. The bill of lading issued was viewed only as evidence of the contract between the shipper and the carrier and not as a contract in itself.

In his analysis of this case, Smith infers the agents EOS to be the losers especially if their agreement with Cho Yang obliged them to take responsibility for the outstanding freight, whether they collected it or not. He points out that as is common practice, the principal had probably sued the shipper against the agent's undertaking to conduct and pay for the cost of litigation.

Liner agents who are willing to take the risk of collecting unpaid freights need to investigate the financial position of their shipper, as well as obtain security from them in form of guarantees or letters of undertaking which can be used in litigation (Smith, 1999). It would also be prudent to consult with their principals and other agents at the receiving port to ensure that invoices for "freight-collect" bills of lading are honored by consignees, especially where large amounts of freight are concerned.

4.2.3.2 Debts and disbursements

Port agency services which form a large part of the liner agent's operational duties, include the payment of port dues such as towage, pilotage and handling fees. Among other services arranged for by the agents are stevedoring, tallying, supplies of bunkers, spare parts, ships supplies and provisions. The agent is expected to settle the costs of the husbandry services from the disbursements advanced by his principal.

The matter of disbursement accounts is addressed in various ways in the sample agreements studied. The *Weser* document in clause 18 says that the agent shall submit to the principal shortly before the vessel's departure, a proforma disbursement account

showing estimated costs, following which the principal shall make the funds available to him, either in full or in part. The agent is not permitted to withhold any freight collected save for his earned commission. The **FONASBA SLAA** under clause 3.46 allows the agent to retain freight collected in order to cover past or present disbursements.

Experience shows that principals do not always live up to their promises to remit funds in advance or in good time in order to allow the agent to settle port due and other disbursements on time. Titchener (2000 p. 41), the secretary-general of the Multiport Ship Agencies Network, writes that agents are put under pressure to settle their principal's debts from their own pockets. This could lead to a financial catastrophe if the agent allows the debt situation to get out of control.

Agents faced with such a problem may have no choice but to have their principals' vessels arrested. Nevertheless, Pitts-Tucker (1999), a shipping lawyer holds that most agents are not willing to take legal action against their principals in a bid to preserve their goodwill. ITIC, advises its members to always get advance funds, and discontinue to act if unpaid disbursements are rising. (Ten hints on avoiding bad debts, 1998, August)

4.3 Agent's remuneration

Liner companies have no choice but to demand efficient and up to date operational services from their agents in the areas of information technology, as well as adequate and properly trained staff in all their service areas so as to preserve their positions in the competitive industry. As such, they expect their appointed agents to invest in and maintain these requirements. Indeed, one agency agreement concerned about its image demands that the agent maintain proper offices in building of good standing at his own expense (*Weser* Agreement (5)). Considering the agents' escalating operational and maintenance expenses, one might expect that they would be remunerated fairly and on a

timely basis so as to cover the cost of the services rendered and still keep a modest profit.

The matter of agency remuneration has been discussed in the press and conferences, and is viewed in various ways by industry experts.

- i) Titchener (2000 p. 41), laments that agents are barely surviving. Liner companies are looking to reducing the agency charges as a way to keep their costs to a minimum.
- ii) For agents in Singapore, exchange rate losses due to the decline in the US dollar against the Singapore dollar are seen to have affected the agents' revenue, since no currency adjustment factor is applied to their agency commission. (Singapore agents battle for independence, 1995, p. 19)
- iii) A recent survey by the Ships Agent & Broker magazine sought to find out what the principals' expectations of their agents were, and what they were actually getting. When asked if price was a factor when it came to choosing who to work with, 63 per cent of them said that the issue was not of their highest contemplation as long as they received a quality service. A representative of DSR Senator Lines was quoted as saying, "Price is of secondary importance. If you squeeze agents too much, they'd go elsewhere." (Ship agents' market place, p. 97). Perhaps this should be taken as a good sign for liner agents to go forth and renegotiate higher commission scales.

This issue has sparked off a series of debates for possible supplements to the conventional provisions of the agency agreements. During the recently held 4th Annual Ship Agency Conference which took place in London on April 2000, the effects of lower freight rates on the liner agents' income were among the points that were highlighted. One of the presenters pointed out that rates have been on a downward trend for the last 10-12 years. Deregulation and anti-trust legislation in America and Europe, has led to increased competition among the principal carriers, and weakened the conference

systems that had traditionally kept the rates stable. These developments have seen the liner agent's traditional income which is based on the freight revenue reduced by huge margins. (Papavassiliou, 2000).

Earlier, during the Liner and Tramp Agency Committee Meeting held in October 1999, in Sintra, Portugal, the remuneration framework of the working committee had pointed out that a majority of the existing agreements, including the *FONASBA SLAA* do not provide for a minimum figure or scale payable to the agent. This situation, coupled with the fluctuating income levels that agents have received over the past several years, has forced many of them to engage in other income generating services open to them. To some, these activities which typically include NVOC, inland haulage and freight forwarding services, may be in conflict of interest with the principal's expectations, as seen in many of the agency agreements analyzed in this study. It is apparent that agents and the principals likewise, need to come up with innovative and workable solutions to this problem.

The participants in Portugal came up with some of the following proposals on how to possibly supplement the agency agreements: -

- i) Propose for a minimum rate per container/ton/cbm and include a lumpsum fee per vessel call, plus what would be a lower commission level. (Chairman)
 - ii) Include an additional "box fee" for administration. (Belgium)
 - iii) Draw up a cost-based analysis for negotiating a fair mark up. (Netherlands)
- (FONASBA, 1999).

4.4 Negotiating terms of agreement

When the time to re-negotiate renewal of agency agreements comes, sometimes the agent has found it difficult to obtain more favorable terms from his principal.

Smith (1999, p. 4), writes that agents are prepared to accept almost any terms offered by principals in order to get new business, and that the latter sometimes ensure a quick deal is closed by giving tight deadlines. He gives an example of an agent who received a revised draft agency agreement comprising 20 closely typed pages from his principal. The latter demanded a confirmation of acceptance within 7 days, failing which the agent would be deemed to have accepted the new terms and conditions.

4.5 Jurisdiction and arbitration

Tailor-made agreements are usually governed by and construed in accordance with the laws of the principal's country of residence or operation, hence making no room for the application of any other laws.

It can prove to be very difficult and expensive for small agents to challenge the large ship owners in their own grounds or distant places. Unfortunately, some agents do not pay enough attention to this clause while on the negotiating level, hence fail to demand the inclusion of favorable options or neutral locations of countries whose laws they have knowledge of.

4.6 THE LINER AGENT'S LIABILITIES

4.6.1 The agent and his principal

The previous chapter discussed the indemnity clauses often found in the liner agency agreements, which require the agent to indemnify the principal for losses arising out of the negligence and willful misconduct of his employees. Agents are bound to make mistakes in the course of their work, especially in the area of documentation. ITIC lists some common mistakes made by agents, which could prove very costly;

- Misdirection of cargo – containers sent to Tripoli in Libya instead of Tripoli in Lebanon.

- Bill of lading drafting errors – freight marked prepaid instead of collect, or failure to clause on-deck cargo.
- Reefer temperature problems – set to +20 degrees instead of –20.
- Manifest errors – weight shown in kilograms instead of pounds. Resulting customs fines.
- Incorrect freight quotations – quote for Bilbao in Spain instead of Balboa in Panama. Freight owed to Line will be claimed from agent.
- Mistaken release of cargo – wrong person, incorrect documents – ship owner's insurance will fail. (Shipping Agency, 1999 p. 2).

A costly example given by ITIC (1999), involved an agent in Antwerp, who booked a cargo of 63 containers to Blantyre but erroneously, quoted a rate for Bloemfontein. The shipper accepted the rate, and the freight difference amounting to USD 250,000 was claimed from the agent by the shipping line.

The examples are many and as one would expect, the principal cannot possibly accept to absorb such massive losses. They have become intolerant to a point of some including onerous clauses, which demand that agents prove that negligence was not on their part for losses, or claims that may arise. In Singapore, principals have introduced an unofficial internal benchmark of 2% as the acceptable level for minor errors. (Singapore agents battle for independence, 1995, p. 19).

Agents are therefore advised to obtain professional indemnity insurance to cover their liabilities as and when they arise.

4.6.2 The liner agent and third parties

More and more, agents find themselves taking the blame for the debts and liabilities of their disclosed principals from various parties in the course of their duties, as illustrated in the following circumstances.

4.6.2.1 The agent and cargo interests

The agent who issues a bill of lading as “agent only” acting on behalf of the carrier is not a party to the contract of carriage. He should, therefore, be able to claim immunity in case of cargo losses, damage or late delivery, as long as such losses did not occur due to his negligence or misconduct.

Agidee (1999, p. 30), a Nigerian based lawyer, writes that the introduction of the Admiralty Jurisdiction Decree into Nigerian law in 1991, makes it possible for the agent to be held personally liable, even if he is acting for a disclosed principal.

(3) “A person who acts as an agent of the owner, charterer, manager or operator of a ship may be held liable irrespective of the liability of his principal for the act, default or commission of the ship in respect of anything done or failed to be done in Nigeria.”

(4) “A person who does anything or carries out any duty under the provisions of this Decree, or under the provisions of any law in force in Nigeria, shall by doing that thing or carrying out that duty constitute himself the agent of that ship.”

4.6.2.2 The agent and port authorities

While undertaking his duties as port agent, the liner agent is usually responsible for settling port charges on behalf of the principal, but should he be held liable for debts or obligations of a disclosed principal? And should his principal's ships cause environmental damage or damage to installations whilst maneuvering in the port areas, should the agent be held liable? The answer is clearly no, but in practice, the agent is often held liable.

Gonzalez-Lebrero (1997, pp. 211-212), indicates that in some countries, agents are held jointly liable for the settlement of dues and costs of damage to port installations, although of course, in a fair world, only vessel owners should be held responsible.

In Spain, the 1992 Ports and Merchant Shipping Act holds the ship's agent jointly liable with his principal for settlement of port charges, sanctions and tariffs related to the ship. In the UK, Bangladesh, Vietnam, Indonesia, the Philippines, Taiwan, Singapore, Thailand and Colombia to name a few, agents have been faced with claims from the local authorities and the situation gets worse when their principals have gone bankrupt. (Soft targets, 1998, p. 5).

Elsewhere, in the USA marine terminal operators have included a provision in their tariffs holding agents responsible for their principal's debts. (Conflicting practice, 1995). Agents have become accessible targets due to their local presence, and the situation is aggravated by the fact that agents are small compared to their strong corporate counterparts.

4.6.2.3 The agent and customs authorities

In some countries, the agent is held liable by customs authorities for duties and fines. In Turkey for example, in the event of shortlanded cargo, the agent is liable for a penalty fee equivalent to the tax amount of the cargo. In the event of overlanded cargo, the agent could be sentenced to 6 months in jail as reported in the minutes of the liner and tramp agency committee meeting, Sintra, Portugal. (FONASBA, 1999, p. 13).

4.6.2.4 The agent and immigration authorities

Arising detention and removal expenses for stowaways, or passengers left ashore should be borne by the principals, as the agent is not concerned with the contract of employment with ships' crew. He should not be held liable for any misconduct of seamen either. Yet, often the agent will find himself being held personally liable in such instances by the immigration officials in his territory.

One clear example was in Spain where an agent was fined Ptsa 30m when stowaways escaped from his principal's ship in Barcelona. (Faulty thinking, 1998, p. 3).

Having said the above, let it be noted that the liabilities suffered by agents are sometimes as a result of their own negligence in the way that they depict themselves to third parties. An agent must be aware, that signing off a contract without clearly indicating its agency status risks to be considered as having contracted on its behalf. (Signing off, 1999, p. 1).

In order to avoid the above from happening, ITIC gives proper guidelines to the agents on how to represent themselves in their dealings with customers, suppliers of services and other involved parties.

- Sign off all documents “as agent only for and on behalf of *XYZ Shipping Company*”
- If invoices are received in your name, send them back and have them re-issued in the name of the principal.
- If you are a liner agent, send out a letter every six months to the suppliers of goods and services to your principals, informing them of your agency status. (Signing off, 1999).

4.7 THE LINER AGENT AND COMPETITION

The need for the principal to protect his business interests by the inclusion of a conflict of interest clause was discussed in the previous chapter. In particular, the agent is expected not to represent other liner companies in direct competition with his principal, or to engage in freight forwarding or NVOCC activities in his territory. Save for the *FONASBA SLAA* and *African* and *Asian* agreements, other agreements do not offer the agent any protection from suffering competition in case his principal appoints another agent within his territory.

Recent developments in the shipping industry have shown that gone are the days when liner agents enjoyed the full business support from their principals. Titchener (2000, April, p. 39), in his discussion on competition writes that the agent is left with a declining share of an increasing market.

There is no shortage of cargoes, nor any suggestion of a fall-off in world trade.

There is however a decline in the level of agency utilization as a result of competition from principals' owned agencies and from other non-specialist service providers.

The reasons given for setting up carrier-owned agency offices are cost-cutting policies, the changing patterns in service requirements, the need to establish standardization in customer service, financial and computer operating systems. Also, increased cargo volumes in some regions like Asia justify the establishment of in-house agencies or branch offices.

The industry has also seen mergers and consolidations of liner companies, which have led to the loss of business for some agencies, whilst these lines re-organize their outsourced activities. In Brazil and Argentina for example, the largest liner agencies have lost business due to the consolidation of trades between South America, Europe and USA, and according to Stares, the regional consolidation process is not over yet. (Stares, 2000). Further, immense progress in the field of information technology with the increasing use of electronic data interchange (EDI) and internet in shipping business transactions, has been viewed as another threat to the traditional role of the liner agent.

Agents are also at the mercy of local regulation, as demonstrated in Singapore's government initiatives to attract shipping lines to Singapore, which inevitably creates stiff competition for the existing independent agents. The 1991 Approved International Shipping Enterprise (AIS) scheme, entitles renowned international shipping companies with world wide networks to a full tax exemption on income originating from operating

vessels in international waters outside of Singapore. (Singapore agents battle for independence 1995, p.19)

The situation has meant that, being an independent agent has become a very risky business. The liner agent, it seems has been left with no choice but to diversify into other areas such as freight forwarding, cargo consolidation and logistics services in order to survive. As principals expand their trade routes and services, and agents also expand their service to principals, it is inevitable that a conflict of interest may arise. However, Johnson (1996), a UK based liner agent turned NVOCC takes a different point of view and points out that the matter of conflict of interest no longer deserves the attention it has received in the past, and encourages agents to actively get involved in offering NVOCC activities.

It may be argued that agents are still capable of representing their principals adequately while diversifying into other areas, but as long as the conflict of interest clauses contained in agency agreements hold, they may find themselves facing charges or being squeezed out of business altogether.

4.8 Conclusion

The independent liner agent's problems are two fold; to overcome the internal challenges of having to fulfil his obligations to his principal and secondly to deal with the changing trade patterns of the liner industry. The external pressures may be overcome if the agents are willing to adapt to the needs of the industry, and take measures to avoid their costly mistakes through training their staff, and taking up liability insurance cover. The internal issues between agents and their principals are better dealt with by cultivating into more transparent and trustworthy relationships with their principals, especially via their member associations, which shall be discussed in the following chapter.

CHAPTER V

THE ROLE OF ASSOCIATIONS AND INTERMEDIARIES

5.1 Introduction

The pressure and challenges of the shipping industry facing the liner agents has necessitated the formation of member associations and other advisory organizations, in order to call for collective bargaining and a better representation of their interests.

This chapter will look at the objectives, work and achievements of some of these international, national and private organizations. As many of the national associations exist in various continents around the globe, it is not possible to examine each one of them within the context of this subject. As such, only a selected number will be introduced as a representation of the on-going efforts to preserve the existence of the liner agency industry.

5.2 INTERNATIONAL SHIPPING AGENTS ASSOCIATIONS

5.2.1 Federation of National Associations of Ship Brokers and Agents (FONASBA)

The federation, which is based in London, the United Kingdom, is an international body set up to deliberate and to voice with authority all matters related to the shipping profession in so far as ship brokers and agents are concerned. It has a present membership of 50 national associations of ship brokers and agents spread all over the five continents of the world.

5.2.1.1 Aims and objectives

- To maintain an organization sufficiently extensive and reputable to justify co-operation with other national and/or international bodies, authorities, associations and organizations involved in matters of concern to the shipping profession.
- To promote a fair and equitable practice in the profession of ship brokers and agents and to that end:
 - to support its members whenever the basic and general interests of their professions are concerned,
 - to co-ordinate common efforts designed to improve, modernize, simplify and/or standardize shipping contracts and documents and in so doing to safeguard the traditional role of the ship broker and agent as intermediary and adviser to both ship and merchant interest,
 - to initiate such conferences, meetings, lectures and the like, as may be required for the discussion of professional affairs, interests and duties;
to engage in such activities as may from time to time, in the opinion of the Council, contribute to the interests of its members. (FONASBA, 2000)

The organization comprises of four working committees namely:

- 1) The Executive Committee
- 2) The Liner and Tramp Agency Committee
- 3) The Chartering and Documentary Committee
- 4) The Membership Committee

(FONASBA, 2000 b.)

5.2.1.2 Documents and publications

Some of the documents and publications of specific interest to the liner agent include;

- 1) FONASBA Standard Liner Agency Agreement (revised and adopted in July 1993).

The agreement provides a guideline to both the principal and liner agent in negotiating and drafting the terms and conditions governing their business relationship. The document has been recommended for use by BIMCO, a private shipping organization which was primarily set up to safeguard the interests of the ship owners.

- 2) FONASBA Sub-Agency Agreement, which is useful to liner agents and their appointed sub-agents.
- 3) The Ship Agent & Brokers magazine, a quarterly publication that reports on news and events in the shipping industry.
- 4) Press releases: - The federation recently issued a press release calling for more clarity in the ship agents' rate structures. The president was quoted as saying,

The relationship between the principal and ship agent is one built on trust. It is important for that trust that principals understand clearly how they are being charged and what the fees cover. It will benefit both sides if it is transparent what the true costs of the service are. (FONASBA, 2000 a.).

5.2.1.3 FONASBA code of conduct

In order for the agency industry to be successful in meeting its obligations, it is important to first obtain the regard and trust of the shipping industry participants and the public at large. The federation's code of conduct sets forth the professional standards and guiding principles expected of its members. The code states that members will at all times: -

- act in accordance with all national laws and regulations of the countries in which they operate,
- adhere strictly to the principles of honesty and integrity,
- operate in a sound and honorable financial manner,
- ensure that all principals' business being handled is dealt with in confidence,

- cooperate with and contribute to the efforts of the appropriate authorities to combat maritime fraud, agree to complete, wherever possible memoranda of understanding with national customs and other appropriate authorities, so as to assist in the halting of illegal trade in banned drugs. (FONASBA news, 1998, p. 11)

5.2.1.4 Draft FONASBA standard port agency conditions

The conditions apply to all member companies engaged in port agency and are designed to protect the agents against unfair liabilities and trading conditions with other industry participants. The final clause contained therein states that in case of conflict between the conditions and any other agreed terms between the two parties; the conditions shall prevail unless the agent openly agrees otherwise in writing. (FONASBA news, 1998)

5.3 NATIONAL SHIPPING AGENTS' ASSOCIATIONS

5.3.1 Cyprus Shipping Association (CSA)

The Cyprus Shipping Association (CSA) was established in 1945 and registered in 1954 under the provisions of the local Trade Unions Law. It is the official organization representing the profession of the shipping agents in Cyprus, and has a total membership of 46 agents. (CSA, 1999).

5.3.1.1 CSA standard trading conditions

CSA recently implemented a set of Standard Trading Conditions to be used by its members. They resemble the conditions promulgated by the Institute of Chartered Shipbrokers in order to match them with the existing local and international business ethics and practices. (FONASBA news, 1998)

The set of conditions outline the terms and conditions applicable to business transactions entered into by the liner and port agents with their partners. (Annex 11). They have been categorized into three groups namely:

- Transactions with the Supplier.
- Transactions with the Merchant.
- Transactions with the Principal.

In general, they state that the liner agent or port agent shall at all times act for and on behalf of all the above parties, and has no authority to enter into transactions as agents unless otherwise stated in writing. The agent, is therefore, not to be held personally liable for any debts owed while acting for or on behalf these parties.

5.3.1.1.1 Agent's liability

The Conditions also address the matter of the agent's liability. "The Company (agent) shall perform its duties with a reasonable degree of care, diligence, skill and judgement. (clause 20). The Company shall be relieved of liability for any loss or damage if and when the damage is caused by:

- (a) Strike, lockout, stoppage or restraint of labour, the consequences of which the company is unable to avoid by exercise of reasonable diligence.
- (b) Any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence. (21)

5.3.1.1.2 Agent's limitation of liability

Clause 22 limits the agent's liability to the merchant up to a maximum of CY pounds 30,000 unless otherwise agreed in writing. However, it further states that the liability to the merchant shall in all situations be limited to the lowest amount, and provides for the

manner in which the amounts payable shall be calculated in sub-sections (a) and (b) of the same item.

5.3.1.1.3 Agent's remuneration

The final section of the CSA Standard Trading Conditions addresses the subjects of remuneration, liens, indemnity and jurisdiction.

In case of failure to honor payments due to the agent by the principal or merchant as per their written agreement, "the Company shall be entitled to recover interest on any sums outstanding at the rate of 9% or such higher or other rate that may from time to time be prescribed by the laws of Cyprus." (24). Further, the agent shall have a general lien on the principal's and merchant's goods in its possession and may sell them at the latter's cost to recover any sums due to him. (25).

5.3.1.1.4 Indemnity

The matter of indemnifying the principal, shippers and suppliers of goods and services for losses and damages arising from the errors and omissions by the agent's directors and employees is covered under clause 26, which states that,

The principal, merchant or supplier undertake not to subject the company's directors, officers or employees to any claims or allegations for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any negligent act error or omission of the beneficiaries in the performance of the services the subject of these conditions.

5.3.1.1.5 Other agreements

The concluding clause 31 of the CSA Standard Trading Conditions states that the terms and conditions contained therein shall prevail unless the company "specifically agrees otherwise in writing."

5.3.2 Singapore National Shipping Association (SNSA)

The association is among the agents who have issued the recommended minimum scales for vessels employed in regular liner trades with effect from 1st June 1995. The rates are subject to negotiation for the performance of additional work. (BIMCO Agency Tariffs, 1998 p. 243)

5.3.2.1 SNSA recommended fee scales

The tariff is quoted in Singapore dollars (SGD) per gross freight, which includes the application of all surcharges, may be summarized as follows: -

Agency fees and other charges

- | | |
|--|--------------|
| a) Husbanding fee for cargo operations per vessel | SGD 2,000.00 |
| b) Consortium co-ordination services (per container) | SGD 10.00 |
| c) Attending to General Average declaration (per vessel) | SGD 2,000.00 |

Cargo commissions and fees

- | | |
|--|-----------------------|
| 1) General and liquid cargo | |
| a) Inward cargo | 3 % of gross freight |
| b) Outward cargo | 6 % of gross freight |
| 2) Freight containers | |
| a) Inward | 3% of gross freight |
| b) Outward | 6% of gross freight |
| 3) Minimum cargo commission per vessel call | SGD 1,500.00 |
| 4) Container management fee/TEU (inward and outward) | SGD 20.00 |
| 5) Transshipment commission | 2% of through freight |
| 6) Nominated export cargo | 4.5% of gross freight |
| 7) Freight collection commission | 1.5% of freight |

5.3.2.2 General conditions

- 1) Principals should credit the agent with sufficient funds at least 3 days before the each vessel's arrival, failing which the agent shall have authority to retain the required disbursement estimates from money collected from freight. The agent is also at will to levy a 2% surcharge on outstanding total disbursements and agency fees, and charge an additional interest at the prevailing bank accounts interest rate if 30 days lapse without him receiving his payment.
- 2) Any disputes arising between the agent and principal shall be resolved according to the law of Singapore.
- 3) In case of agency termination, notice shall be given in conformity with the legislation of the agent's country or a minimum of 6 months notice shall apply. The principal shall indemnify the agent for any arising consequences following the termination of his activities.

5.4 INSURANCE, LEGAL AND CONSULTANCY SERVICES

5.4.1 The International Transport Intermediaries Club Limited (ITIC).

ITIC, a mutual insurance company located in London, the United Kingdom was started 75 years ago with the aim of providing professional indemnity and liability insurance to the transport industry.

The services offered by ITIC include the following: -

- Professional indemnity insurance
- Liability insurance
- Commission income insurance
- Cargo liability insurance
- Debt collection services.

In addition, the club offers direct advisory services to its members in order to help them cope with the challenges they face in their day to day operations. ITIC is also active in producing regular publications and circulars on various subjects to educate ship agents on some of the ways to reduce their risks and exposure to claims.

These are contained in the in-house Claims Review and The Intermediary publications such as: -

- 1) Ten golden rules for the delivery of cargo.
- 2) Issuance of bills of lading.
- 3) Signing off - When acting for and on behalf of principals in order to avoid liability claims from suppliers and other service providers.
- 4) Ten hints on avoiding bad debts.

5.4.2 Paul Smith Associates

PS Associates is a London based company involved in offering legal and consultancy services to the transport industry.

The company is a member and associate of several professional associations such as FONASBA, BIMCO and the Chartered Institute of Arbitrators and provides specialist consultancy services and direct representation in the following areas: -

- Insurance
- Loss prevention
- Contract negotiation
- Claims handling
- Debt recovery
- Arbitration and alternative dispute resolution

5.5 Conclusion

In summary, both international and national associations of agents have taken remarkable steps towards bargaining for better terms and conditions for their members. In addition to FONASBA's attempts to regulate the agency agreements and improve the agents' performance standards, CSA and SNSA have taken measures to demand better terms in the contentious areas of remuneration, indemnity and agents' liability, jurisdiction and termination. It is the hope of the author that these associations have managed to have the established trading conditions and remuneration scales implemented in practice.

CHAPTER VI

CONCLUSION AND RECOMMENDATIONS

The study examined the contents of some liner agency agreements in use, with the aim to ascertain if there were existing imbalanced liner agency agreements that require improvement. The analysis was geared towards establishing any correlation between the common liabilities and problems faced by liner agents, and the so-called use of "principal-biased" agreements. The attempts to protect the ship agents' interests via the formation of agents' associations and through the insurance channels were illustrated.

The following is a summary of the main findings of the study, as well some alternative solutions to the main problems associated with the liner agency agreements and the agents' working environment in general.

6.1 The current challenges on liner agency agreements

- 1) The requirements of tailor made agreements: - Principal biased agreements certainly exist and contain some contentious clauses that require consideration, mainly: -
 - I. Indemnity clauses
 - II. Termination for breach clauses
 - III. Terms of remuneration
 - IV. Jurisdiction and arbitration
 - V. Conflict of interest

The above imparities play a role in some of the detrimental circumstances that agents have often found themselves in as explained in chapter four, e.g. liability for their principals' debts. However, it must be emphasized that not all the agreements analyzed make onerous demands upon the agent. The *North Continental* and *Asian* agreements, for instance, seem like relatively acceptable documents which have not applied much effort towards apportioning liabilities to the agent in the so called indemnity clauses. The specification of the two agreements must not be taken to mean that principals from these regions are more impartial than others. They are only used to represent the author's view that some principals are fair and flexible when it comes to laying out their terms of service.

2) The FONASBA Standard Liner Agency Agreement: - The study shows that the contents of the *FONASBA SLAA* have not proved very popular with the principals. This is demonstrated by the omission of the compensation terms (clauses 6.02 - 6.03) in case of agency termination by the principal, from the *African* agreement which, save for these alterations, is a replica of the *FONASBA SLAA*.

6.1.1 Possible solutions

- I. It has been seen that some tailor-made agreements offer fair and flexible terms to both parties. This should be a sign to agents out there that they have to stop accepting the imposition of burdensome clauses from their principals, and continue to negotiate for balanced agreements.
- II. If the agents are incapable of demanding agreements based on this draft, it is time to return to the drawing table to redraft another version. One that is not only more palatable to the principals, but one that also takes into account the changing service requirements and the evolving role of the liner agent today.
- III. The efforts of certain ships agents' associations have made some commendable progress towards improving the agents legal status as demonstrated in the

adoption of the CSA Standard Trading Conditions. What remains to be done is to ensure the integration of these efforts into the legal framework of the various national regulations. It is unfortunate that the legal systems in many of the countries where agents operate do not recognize the ship agents' status; hence the implementation of fair conditions may be a difficult task to achieve at this time.

- IV. Perhaps the best solution would be for liner agents to elevate their position in relation to the principal from one of master-servant to one of partnership. This move from the traditional agency status and the eradication of the liner agency agreements may prove more beneficial and less troublesome for both parties.

6.2 Competition

It is expected that increased competition for liner agency representation resulting from mergers, acquisitions, consolidations, the setting up of in-house agencies, as well as the entry of new participants in the liner industry will continue to impact negatively on the survival of the independent liner agencies. What can the regular liner agent do to ensure his continuance? There are several ways forward, some of which the zealous agents, especially those located Europe and North America, have already taken up

6.2.1 Possible solutions to counter competition

- I. Agency consolidation: - Smaller liner agents could benefit from operating joint back office operations while maintaining separate sales channels for their respective principals. Not only can they achieve size and improve their professionalism, but this kind of arrangement would also enable them to spread their overhead costs. As opposed to competing amongst themselves for a diminishing market, they can attain greater bargaining power when negotiating contracts with their principals. Joint ventures would give the smaller agents the flexibility to offer principals the required service at an acceptable cost, therefore reducing the need for principals to open their own agencies.

- II. Service diversification as opposed to specialization: -Today, importers and exporters of cargo in most parts of the world are demanding door to door services plus a range of logistics services which include cargo consolidation, warehousing, packaging, inland haulage, forwarding and shipping. Already, some liner operators and freight forwarding companies have moved towards offering supply chain management to their customers. Liner agents must not lag behind in what seems to be a growing and lucrative market; they must participate in either one of the following ways by: -
- a) Extending their services as agents to include the representation of NVO's, or;
 - b) Becoming NVO's by their own right. Johnson, chairman of Johnson Stevens Agencies Limited (UK), a former liner agency now operating as NVO, describes their move as having been very successful. Their example portrays how a liner agent has managed to take over the freight previously controlled by the former principal who became bankrupt. (2000 April, pp. 46 - 48)

The advantages for an established liner agent to undertake NVO services while operating under a Multi-modal Transport Operator or freight forwarders certificate are that he already has the financial capability, expertise of the local operating climate, qualified staff and, most importantly, close relations with the existing customers.

The role of marketing and documentation would essentially remain the same, though the agents would no longer be responsible for port agency services. They would however need to take up insurance policies to cover their liabilities to cargo interests, just like the carriers, as well as extend their networks with other companies to cover their operations in their international service areas. In their dealings with the vessel owners, the NVO's utilize the shipping line containers and buy slots from a choice of shipping lines at pre-determined costs.

Their large volumes would enable them to negotiate favorable rates from their former principals. In addition, as opposed to collecting freight on behalf of the principal and remitting the whole amount less their commission, as NVO's they can bank all freight and negotiate credit terms while earning additional income on interest.

6.3 Liner agents' liability

The results of the study show that more and more, the liner agent is having to deal with liabilities and claims from cargo interests, port authorities, suppliers of goods and services. It is also evident that liner agents sometimes have themselves to blame for their woes. The examples given in chapter four illustrate that frequent and indeed costly errors occur mainly in the documentation process.

6.3.1 Solutions

The following precautions must be applied simultaneously:-

- I. Training of personnel on how to avoid common mistakes.
- II. Mistakes cannot be eradicated altogether. Agents must therefore obtain insurance to cover unforeseen liabilities.
- III. Avoid getting into burdensome agreements.

6.4 Closing remarks

Several possible solutions to counter the problems faced by liner agents today have been suggested. The best solutions can only be achieved with attempts to create a more amicable working environment, and in turn contribute in providing the required services to the liner shipping industry. It is the author's conviction that efforts must be applied at all levels, namely: -

On a global level

FONASBA, must continue to lobby for a forum of discussion between themselves and the ship owner's representatives (BIMCO) especially on the issue of remuneration. The federation has already received a proposal requesting agents to assist in carrying out a cost-based analysis by providing their individual cost structures. The federation needs to make a follow up, and based on the results of the analysis, use it as justification for principals to pay agents a fair mark-up to these determined costs. It is necessary for FONASBA to come up with minimum guidelines for calculating and applying the proposed mark up rates for use by its members.

On a national level

It was beyond the scope of this study to establish the existence of national associations for agents and to analyze all their achievements. The attempts of two associations, namely the Cyprus Shipping Association and Singapore National Shipping Association to protect their members' interests were described in chapter five. It is to the advantage of liner agents all over the world to affiliate themselves with their local associations. National associations must also lobby with their relevant government authorities to put into place legal systems that give the agent a recognized status and legal protection.

On the agency level

The sentiments expressed by some liner operators indicate a sense of mistrust and dissatisfaction with regard to the level of the efficiency of their independent agents, especially in the areas of communication, sales and client service. What the agents need to do is to apply concerted efforts within their own in-house set ups in order to deliver the required services to their principals, as well as reevaluate their strategies in line with the rapidly changing global trends of the transport industry.

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ANNEXES

Annexes 1-2 and 4-10 have been removed
due to their confidential nature



The Federation of National Associations of Ship Brokers and Agents

FONASBA

STANDARD LINER AGENCY AGREEMENT

Fourth Edition
Revised and adopted JULY 1993
Recommended by The Baltic and International Maritime Council (BIMCO)

It is hereby agreed between:

..... of (hereinafter referred to as the Principal)

and

..... of (hereinafter referred to as the Agent)

dated the day of 19.....

that:

- 1.00 The Principal hereby appoints the Agent as its Liner Agent for all its owned and/or chartered vessels including any space or slot charter agreement serving the trade between and
- 1.01 This Agreement shall come into effect on and shall continue until Thereafter it shall continue until terminated by either party giving to the other notice in writing, in which event the Agreement shall terminate upon the expiration of a period of months from the date upon which such notice was given.
- 1.02 The territory in which the Agent shall perform its duties under the Agreement shall be hereinafter referred to as the "Territory".

2.00 General Conditions

- 2.01 This Agreement covers the Port and/or Inland Agency work within the Territory. It includes the duties of marketing the Principal's services and of handling of all types of cargo entering or leaving the Territory whether direct or by transshipment. It also includes the handling of vessels owned, chartered (including any slot or space charter agreement) or otherwise operated by the Principals within the port(s) of the Territory. Work performed as Liner Agent under this Agreement will be strictly separated from any work performed as General Agent for which a separate Standard General Agency Agreement and separate remuneration will be applicable.
In case of any ambiguity as to which agreement governs the work in question, the terms of the Standard Liner Agency Agreement will prevail.
- 2.02 The Agent undertakes not to accept the representation of other shipping companies nor to engage in NVOCC or such freight forwarding activities in the Territory, which are in direct competition to any of the Principal's transportation activities, without prior written consent, which shall not unreasonably be withheld.
- 2.03 The Principal undertakes not to appoint any other party in the Agent's Territory for the services defined in this Agreement.
- 2.04 Where any of the activities of the Agent in the Territory are not covered by this Agreement, then the local General Conditions in the latest version or established custom of the trade and/or port shall apply and form part of this Agreement, unless otherwise agreed. The Agent undertakes to acquaint the Principal with any relevant local custom or practice and to furnish the Principal with a copy of the local General Conditions if any.
- 2.05 In countries where the position of the agent is in any way legally protected or regulated, the Agent shall have the benefit of such protection or regulation, unless otherwise agreed.
- 2.06 All aspects of the Principal's business are to be treated confidentially and all files and records pertaining to this business are the property of the Principal.

3.00 Duties of the Agent

- 3.01 To represent the Principal in the Territory, using his best endeavours to comply at all times with any reasonable specific instructions which the Principal may give, including the use of Principal's documentation, terms and conditions.
- 3.02 In consultation with the Principal to recommend and/or appoint on the Principal's behalf and account, Sub-Agents if required.
- 3.03 In consultation with the Principal to recommend and/or to appoint on the Principal's behalf and account, Stevedores, Watchmen, Tallymen, Terminal Operators, Hauliers and all kinds of suppliers if required.
- 3.04 The Agent will not be responsible for the negligent acts or defaults of the Sub-Agent or Sub-Contractor unless the Agent fails to exercise due care in the appointment and supervision of such Sub-Agent or Sub-Contractor.
Notwithstanding the foregoing the Agent shall be responsible for the acts of his subsidiary companies appointed within the context of this Clause.
- 3.05 The Agent will always strictly observe the shipping laws and regulations of the country and will indemnify the Principal for any fines, penalties, expenses or restrictions that may arise because the Agent wilfully failed to comply with those laws or regulations.

3.10 Marketing and Sales

- 3.11 To provide marketing and sales activities in the Territory, in accordance with general guidelines laid down by the Principal, to canvass and book cargo, to publicise the services and to maintain contact with Shippers, Consignees, Forwarding Agents, Port and other Authorities and Trade Organisations.
- 3.12 To provide statistics and information and to report on cargo bookings and use of space allotments. To announce sailing and/or arrivals, and to quote freight rates and announce freight tariffs and amendments.
- 3.13 To arrange for public relations work (including advertising, press releases, sailing schedules and general promotional material) in accordance with the budget agreed with the Principal and for his account.
- 3.14 To attend to Conference matters if required on behalf of the Principal and for the Principal's account.
- 3.15 To issue on behalf of the Principal Bills of Lading and Manifests, documents requested by conferences, delivery orders, certificates and such other documents as may be reasonably required.

3.20 Port Agency

- 3.21 To arrange for berthing of vessels, loading and discharging of the cargo, in accordance with the local custom and conditions.
- 3.22 To supervise and co-ordinate all activities of the Terminal Operators, Stevedores, Tallymen and all other Contractors, in order to ensure the proper performance of the customary requirements for the best possible operation and despatch of the Principal's vessel.
- 3.23 To arrange for calling forward, reception and loading of outward cargo and discharge and release of inward cargo and to attend to the transshipment of through cargo.
- 3.24 To arrange for bunkering, repairs, husbandry, crew changes, passengers, ship's stores, spare parts, technical and nautical assistance and medical assistance as required.
- 3.25 To carry out the Principal's requirements concerning claims handling, P&I matters, General Average and/or Insurance, and the appointment of Surveyors.
- 3.26 To attend to all necessary documentation and to attend to consular requirements if required.
- 3.27 To arrange for and attend to the clearance of the vessel and to arrange for all other services appertaining to the vessel's movements through the port.
- 3.28 To report to the Principal the vessel's position and to prepare a statement of facts of the call and/or a port log.
- 3.29 To keep the Principal regularly and timely informed on Port and working conditions likely to affect the despatch of the Principal's vessels.

3.30 Container and Ro/ro Traffic

Where "equipment" is referred to in the following section it shall comprise containers, flat racks, trailers or similar cargo carrying devices, owned, leased or otherwise controlled by the Principal.

- 3.31 To arrange for the booking of units on the vessel.

- 3.32 To arrange for the stuffing and unstuffing of LCL cargo at the port and in consultation with the Principal to arrange for the provision of inland LCL terminals, and the supervision of these activities where required.
- 3.33 To prepare the additional container shipping documentation.
- 3.34 To provide and administer a proper system, or to comply with the Principal's system for the control and registration of equipment. To organise equipment stock within the Agent's Territory and if required make provision for storage, positioning and repositioning of the equipment.
- 3.35 To comply with Customs requirements and arrange for equipment interchange documents in respect of the movements for which the Agent is responsible and to control the supply and use of locks, seals and labels.
- 3.36 To make equipment available and to arrange inland haulage as required.
- 3.37 On behalf and for the account of the Principal to undertake the leasing of equipment into and re-delivery out of the system.
- 3.38 To operate an adequate equipment damage control system in compliance with the Principal's instructions. To arrange for equipment repairs and maintenance, when and where necessary and to report on the condition of equipment under the Agent's control.

3.40 Accounting and Finance

- 3.41 To provide for appropriate records of the Principal's financial position to be maintained in the Agent's books, which shall be available for inspection as required and to prepare periodic financial statements as may be reasonably required.
- 3.42 To check all vouchers received for services rendered and to prepare a proper disbursement account in respect of each voyage or accounting period.
- 3.43 To advise the Principal of all amendments to port tariffs and other charges as they become known.
- 3.44 To calculate freight and other charges according to Tariffs supplied by the Principal and to exercise every care and diligence in applying all terms and conditions of such Tariffs or other freight agreements. If the Principal organises or employs an organisation for checking freight calculations and documentation the costs for such checking to be entirely for the Principal's account.
- 3.45 To collect freight and related accounts and remit to the Principal all freights and other monies belonging to the Principal at such periodic intervals as the Principal may require. All bank charges to be for the Principal's account. The Agent shall advise the Principal of the customary credit terms and arrangements. If the Agent is required to grant credit to customers due to commercial reasons, the risk in respect of outstanding collections is for the Principal's account unless the Agent has granted credit without the knowledge and prior consent of the Principal.
- 3.46 The Agent shall have authority to retain money from the freight collected to cover all past and current disbursements, subject to providing regular cash position statements to the Principal.
- 3.47 The Agent in carrying out his duties under this Agreement shall not be responsible to the Principal for loss or damage caused by any Banker, Broker or other person, instructed by the Agent in good faith unless the same happens by or through the wilful neglect or default of the Agent. The burden of proving the wilful neglect of the Agent shall be on the Principal.

4.00 Principal's Duties

- 4.01 To provide all documentation, necessary to fulfill the Agent's task together with any stationery specifically required by the Principal.
- 4.02 To give full and timely information regarding the vessel's schedules, ports of call and line policy insofar as it affects the port and sales agency activities.
- 4.03 To provide the Agents immediately upon request with all necessary funds to cover advance disbursements unless the Agent shall have sufficient funds from the freights collected.
- 4.04 The Principal shall at all times indemnify the Agent against all claims, charges, losses, damages and expenses which the Agent may incur in connection with the fulfillment of his duties under this Agreement. Such indemnity shall extend to all acts, matters and things done, suffered or incurred by the Agent during the duration of this Agreement, notwithstanding any termination thereof, provided always, that this indemnity shall not extend to matters arising by reason of the wilful misconduct or the negligence of the Agent.
- 4.05 Where the Agent provides bonds, guarantees and any other forms of security to Customs or other statutory authorities to cover the movement of cargo on behalf of the Principal or the Principal's containers, stores or other equipment then the Principal shall indemnify and reimburse the Agent immediately such claims are made, provided they do not arise by reason of the wilful misconduct or the negligence of the Agent.

- 4.06 If mutually agreed the Principal shall take over the conduct of any dispute which may arise between the Agent and any third party as a result of the performance of the Agent's duties.

5.00 Remuneration

- 5.01 The Principal agrees to pay the Agent and the Agent accepts, as consideration for the services rendered, the commissions and fees set forth on the schedule attached to this Agreement. Any fees specified in monetary units in the attached schedule shall be reviewed every 12 months and if necessary adjusted in accordance with such recognised cost of living index as is published in the country of the Agent.
- 5.02 Should the Principal require the Agent to undertake full processing and settlement of claims, then the Agent is entitled to a separate remuneration as agreed with the Principal and commensurate with the work involved.
- 5.03 The remuneration specified in the schedule attached is in respect of the ordinary and anticipated duties of the Agent within the scope of this Agreement. Should the Agent be required to perform duties beyond the scope of this Agreement then the terms on which the Agent may agree to perform such duties will be subject to express agreement between the parties. Without prejudice to the generality of the foregoing such duties may include e.g. participating in conference activities on behalf of the Principal, booking fare-paying passengers, sending out general average notices and making collections under average bonds insofar as these duties are not performed by the average adjuster.
- 5.04 If the Tariff currency varies in value against the local currency by more than 10% after consideration of any currency adjustment factor existing in the trade the basis for calculation of remuneration shall be adjusted accordingly.
- 5.05 If the Agent utilises computers and computer systems, any extra expenses occasioned by specific additional requirements of the Principal in the use of such computer equipment for the performance of the Agent's duties to the Principal shall be borne by the Principal.

6.00 Duration

- 6.01 This Agreement shall remain in force as specified in clause 1.01 of this Agreement. Any notice of termination shall be sent by registered or recorded mail.
- 6.02 If the Agreement for any reason other than negligence or wilful misconduct of the Agent should be cancelled at an earlier date than on the expiry of the notice given under clause 1.01 hereof, the Principal shall compensate the Agent. The compensation payable by the Principal to the Agent shall be determined in accordance with clause 6.04 below.
- 6.03 If for any reason the Principal withdraws or suspends the service, the Agent may withdraw from this Agreement forthwith, without prejudice to its claim for compensation.
- 6.04 Where applicable the current local General Conditions in the latest version and failing those the National Law on the termination of Agency Contracts will apply to this Agreement. Where no such conditions of Statute Law apply, the basis of compensation shall be the monthly average of the commission and fees earned during the previous 12 months or if less than 12 months have passed then a reasonable estimate of the same, multiplied by the number of months from the date of cancellation until the contract would have been terminated in accordance with clause 1.01 above. Furthermore the gross redundancy payments, which the Agent and/or Sub-Agent(s) is compelled to make to employees made redundant by reason of the withdrawal or suspension of the Principal's service, or termination of this Agreement, shall also be taken into account.
- 6.05 The Agent shall have a general lien on amounts payable to the Principal in respect of any undisputed sums due and owing to the Agent including but not limited to commissions, disbursements and duties.

7.00 Jurisdiction

- 7.01 a). This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of this Agreement shall be referred to arbitration in London, one arbitrator being appointed by each party, in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. On receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single Arbitrator appointed shall apply. If two arbitrators properly appointed shall not agree they shall appoint an umpire whose decision shall be final.
- b) Any dispute arising out of this Agreement shall be referred to arbitration atsubject to the law and procedures applicable there.
- a) and b) are alternatives, if subclause b) is not filled in then a) shall apply.*

REMUNERATION SCHEDULE BELONGING TO STANDARD LINER AGENCY AGREEMENT

Between and date
(as Principal) (as Agent)

The Agent is entitled to the following remuneration based on all total freight earnings (including any surcharges, handling charges and freight additional which may be agreed) of the Principal's liner service to and from the Territory to be paid in Agent's local currency. The total remuneration per call shall not in any case be lower than the local fee applicable.

- I. A. Where the Agent provides all the services enumerated in this Agreement the Commission shall be:
- Services outward%
inward%
- B.% for cargo when only booking is involved.
- C.% for cargo when only handling is involved.
- ("only handling" in the remuneration schedule is so defined that the duties of an Agent are to call forward and otherwise arrange for the cargo to be loaded on board, where the specific booking has been made elsewhere and acknowledged as such by the shipper as nominated for the Principal's service.
- D. In respect of movements of cargo outside the Agents' Territory% of the gross total freight is payable in cases where only collection of freight is involved.
- E. An additional fee for containers and/or units entering or leaving the inventory control system of the Agent a fee of per unit.
- II. A.% for cargo loaded on board in bulk.
- B.% for cargo discharged in bulk.
- III. Where the Agent provides only the services as non-port agent the remuneration shall be:
- When actually booked/originating from this area:
- A. Services outward%
inward%
- B. An additional fee for containers and/or units entering or leaving the inventory control system of the Agent a fee of per unit.
- IV. Where the Agent provides only the services as non-port agent the remuneration shall be:
- A.% for cargo loaded on board in bulk.
- B.% for cargo discharged in bulk.
- V. Clearance and ship's husbandry fee shall be as agreed.
- VI. A Commission of% shall be paid on all ancillary charges collected by the Agent on behalf of the Principal such as Depot Charges, Container Demurrage, etc.
- VII. Communications: The Principal will either pay actual communication expenses on a cost plus basis or pay a lumpsum monthly on an average cost plus basis, to be reviewable.
- VIII. Travelling expenses: When the Agent is requested by the Principal to undertake journeys of any significant distance and/or duration, all travel expenses including accommodation and other expenses will be for the Principal's account.
- IX. Documentary and Administrative Charges: Such charges to be levied as appropriate by the Agent to cargo interests.

PRINCIPAL

AGENT

ANNEX 11

CYPRUS SHIPPING ASSOCIATION (CSA) STANDARD TRADING CONDITIONS FEBRUARY 1998

All transactions entered into by a Member of the Cyprus Shipping Association (hereinafter "the Company") in connection with or arising out of the Company's business as a port agent or liner agent or booking agent or cargo handling agent shall be subject to the following terms and conditions unless otherwise agreed or stated by the Company in writing.

1. In these conditions the following expressions have the following meanings:

(a) "Supplier" means the company firm or person, organisation or other competent Authority, who contracts through, the Company to supply services or goods to the Principal or Merchant

(b) "Merchant" means the company firm or person who ships, receives, owns or forwards goods in respect of which the Company, whether as agent or principal, has agreed to provide or procure services.

(c) "Principal" means the company firm or person who has or whose representatives have instructed the Company and is the owner or charterer or manager of the vessel represented by the Company and/or the carrier under the bill of lading in connection with which services are provided by the Company.

(d) "Forwarding Services" means those services usually provided or arranged by a freight forwarder including the carriage, of goods to the port of loading and from the port of discharge, the storage, packing or consolidation of goods and the stuffing and stripping of containers.

(e) "Cargo Handling Services" means the services provided or arranged by the Company in respect with the handling of cargo including loading and discharging, transport, lashing/unlashing, slinging/unslinging, storage, stuffing and stripping of containers and any other related or connected cargo, handling activities.

(f) "Cargo Booking Services" means those services provided or arranged by the Company in respect with the, booking, of cargo on vessels including providing information on vessels and schedules, the solicitation of cargo, the canvassing for cargoes, freight quotations and negotiations as to any cargo transport agreements with Merchants and any other related activities.

Transactions with the Supplier

The following terms and conditions shall apply to transactions with the Supplier:

2. Unless otherwise stated in writing, when the Company is acting as a port agent or liner agent or booking agent it acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Supplier as agent for the Principal. The Company shall not be personally liable to pay any debt due to the Supplier from the Principal.

3. Where the Company is acting as a forwarding agent, cargo handling agent or cargo booking agent, unless it is acting as agent for the Principal in accordance with clause 2 hereof or otherwise agrees in writing, it acts at all times as agent for and on behalf of the Merchant and has authority to enter into contracts with the Supplier as agent for the Merchant. The Company shall not be personally liable to pay any debt due from the Merchant.

Transactions with the Merchant

The following terms and conditions shall apply to transactions with the Merchant:

4. When acting as port agent or liner agent or cargo handling, agent or cargo booking agent, the Company acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Merchant as agent for the Principal. The Company shall not be personally liable to pay any debt due from the Principal.

5. Unless otherwise agreed in writing, where-to, Company is instructed by the Merchant to arrange forwarding services, cargo handling services or cargo booking services, the Company shall act as agent for the Merchant in procuring the requested services from Supplier.

6. Where the Company arranges services for the Merchant's goods which are or will be carried in accordance with a contract with the Principal contained in or evidenced by a bill of lading, charter party or other contract of affreightment, all services including cargo handling services or cargo booking services, forwarding services, are arranged by the Company as agent for and on behalf of the Principal. The provision of such services shall be subject to the terms and conditions of the Principal's bill of lading and tariff rules (if any), which may be inspected on request, or, other contract, between the Principal and the Merchant.

7. If the Company agrees in writing that it will be personally responsible for the provision of forwarding services, cargo handling services or cargo booking services, unless otherwise agreed in writing, the Company shall be relieved of any liability for loss or damage if it can establish that such loss or damage resulted from:

(a) the act or omission of the Merchant or his representative or any other party from whom the Company took charge of the goods;

(b) inherent vice of the goods, including improper packing, labeling or addressing (except to the extent that the Company undertook to be responsible therefor);

(c) handling, loading, stowage or unloading of the goods by the Merchant or any person acting on his behalf other than the Company;

(d) seizure or forfeiture under legal process;

(e) riot, civil commotion, strike, lock-out, general or partial stoppage or restraint of labour from whatever cause;

(f) any consequence or war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to any property or goods by or under the order of any Government or public or local authority;

(g) any cause or event which the Company was unable to avoid and the consequences whereof the Company was unable to prevent by the exercise of due diligence.

8. Where so requested in writing by the Merchant or his representative, the Company shall enter and/or clear goods through Customs and/or arrange insurance for the goods as agent for the Merchant. The Company shall have authority to appoint agents to perform such services on behalf of the Merchant, and the agents so appointed shall act as the Merchant's agents and not the Company's agents.

9. Where the Company agrees to provide or arrange services for the Merchant's goods, the Merchant shall be deemed to have authorised the Company to conclude all and any contracts necessary to provide those services. The Merchant shall reimburse on demand the Company with all taxes, charges or fines whatsoever incurred by the Company as a result of providing or arranging the services, of undertaking any liability in connection with the services, particularly in respect of any bond issued to the Department of Customs and Excise, the Cyprus Ports Authority or any other competent Authority by the Company.

10. The Merchant shall declare to the Company full details of goods, which are of a dangerous or damaging nature, including those goods, which are more particularly described in the IMO Code. Should the Merchant fail to provide such details at the time of contract, the Merchant shall be responsible for all costs and damages arising as a result thereof and the Company shall have the right exercisable on behalf of itself or its Principal to rescind the contract. ,

11. The Company shall not be liable for loss or damage to goods, unless it is advised thereof in writing within three days after the termination of transit and the claim is made in writing within 7 days, alternatively advice is given within 28 days of the commencement of transit and the claim is made in writing within 42 days, provided always that these limits shall not apply if the Merchant can establish that it was not reasonably possible for him to make a claim in writing within the time limit and notice was given within a reasonable time.

Transactions with the Principal:

The following terms and conditions shall apply to transactions with the Principal:

12. The Company shall be the principal's agent and shall exercise due care and diligence in performing services for and on behalf of the Principal.

13. The Principal shall indemnify the Company in respect of all liabilities incurred by the Company where acting as a port agent or liner agent or booking agent or cargo handling agent or cargo booking agent on the Principal's behalf.

14. The Principal shall pay forthwith by telegraphic transfer to the Company's bank account such sum as the Company may request as an advance on port and cargo handling disbursements which the Company estimate will be incurred whilst the Principal's vessel is in the Company's agency. If the Principal should fail to comply with the Company's request, the Company may at any time give notice of the termination of its agency.

15. The Company shall be entitled to deduct from sums held by the Company for the Principal's account any amounts due to the Company from the principal.

16. The liability of the Company to its Principal in respect of any negligent act error or omission committed by the Company its directors, or employees shall not exceed the amount of the fees or commission payable by the Principal to the Company in respect of the vessel or shipment involved (whichever is less) which. fees or commission shall be deemed earned in any event. Provided always that where the Agent acts prudently all damages sustained by or to the ships gear including containers shall be for the account of the Principal.

17. The Company shall not be liable to indemnify the Principal in respect of any contractual fine, penalty or forfeit incurred by the Principal,

18. Subject to any written instructions to the contrary the Company shall have authority to appoint agents to perform services on behalf of the Principal, including such services as may be the subject of these conditions, and the agents so appointed shall act as the principal's agents and not the Company's agents.

19. Save where otherwise specifically provided herein the provisions to be found in the FONASBA Standard Liner Agency Agreement (as applicable from time to time) shall apply as between the Company and the Principal.

Liability and Limitations

20. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.

21. The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:

(a) Strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence.

(b) Any cause or event which the Company is unable to avoid and the consequences whereof the Company is, unable to prevent by the exercise of reasonable diligence.

22. Unless otherwise agreed in writing and in each instance with a maximum of CY£30.000, the liability of the Company to the Merchant shall in all circumstances be limited to the lesser of sums calculated in the following manner:

(a) where goods are lost or damaged:

(i) the value of goods lost and damaged,

(ii) a sum calculated at the rate of CYE400 per tonne of the gross weight of any goods lost or damaged.

(b) in all other circumstances:

(i) the value of the goods the subject of, the relevant transaction between the Company and the Merchant or

(ii) a sum calculated at the rate of CYf400, per tonne of the gross 'weight of the goods the subject of the transaction. ;

23. For cargo handling and/or stevedoring services the Company in no event shall be liable for an amount in excess of that to which the shipping line/shipowner is able to limit its liability to the shipper or consignee under the terms to the Bill of Lading or to a sum of CYf400 per tonne of the gross weight of the goods whichever shall be the least.

General

24. If the Merchant or the Principal, as the case may be, fails to make payment in full of any sums due to the Company on demand or within any period agreed in writing, the Company shall be entitled to recover interest on any sums outstanding at the rate of 9% or such higher or other rate that may from time to time be prescribed by the laws of Cyprus.

25. The Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the Principal or the Merchant and/or their representatives and shall be entitled to sell or dispose of such goods or documents as agent for and at the expense of the Principal or the Merchant and apply the proceeds towards the monies due and the expenses or the retention insurance and sale of the goods, the Company shall, upon accounting to the Principal or the Merchant for any balance remaining, be discharged from all liability whatsoever in respect of the goods.

26. The Company shall be entitled to retain and be paid all brokerages, commission, allowances and other remuneration, usually retained by or paid to freight forwarders including cargo handling charges.

27. The Merchant, the Supplier and the Principal each undertake with the Company that no claim or allegation of any kind shall be made against any of the Company's directors officers or employees (herein collectively called "the Beneficiaries") for any loss damage or delay of whatsoever kind arising or resulting directly or, indirectly from any negligent act error or omission of the Beneficiaries in the performance of the services the subject of these conditions. The Beneficiaries shall have the benefit of this undertaking and in entering into this contract the Company, to the extent of this provision, does so not only on its own behalf but also as agent or trustee for the Beneficiaries, who shall to the extent of this clause only be or be deemed to be parties to this contract.

28. The Company shall perform the services it undertakes to provide with due dispatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent.

29. The Company shall be discharged from all liability whatsoever to the Principal the Supplier or the Merchant unless suit is brought within one year of delivery of the goods or the date when they should have been delivered or of the act or default complained of, whichever is the earlier.

30. These conditions shall be subject to Cyprus Law.

31. If there is any conflict between the terms set out herein and any other terms and conditions agreed between the parties these Conditions shall prevail unless the Company specifically agrees otherwise in writing.

32. The Principal and/or Merchant undertake to comply with the provisions of the International Convention for Safe Container (CSG) 1972 relating to the safety of containers. Any damage caused (including bodily harm) by the non-compliance with the said Convention shall render the Company harmless of any, responsibility despite any involvement of the Company. With regard to containers the Customs Convention of Container 1972 shall apply under these conditions.

33. A Principal or Merchant shall pay to the Company for the services rendered by the Company all amounts as may have been agreed between them by virtue of any agreement concluded, the amounts arising out of the charges as per the official tariffs approved from time to time by the Cyprus Ports Authority as well as all those charges normally or habitually charged by the company for services such as notification fees, bill of lading fees, service fees etc at the rates recommended or otherwise suggested by the C.S.A. In the event of a particular service not being provided for in the scale of charges the Principal or Merchant shall pay the Company a reasonable charge for such service.

FEBRUARY, 1998