



While Vessel Waits – The Agent Works

By Patrick V. Martin, ASBA Legal Counsel

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

The Owner makes basically two arguments:

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

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

It should also be mentioned that during the extended time, the Owner is likely earning and billing for demurrage.

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

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

The Agent should keep detailed, accurate records of all work done so that it can substantiate any additional fees charged.

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