

Shouldn't Principals Vet Agents like Charterers Vet Ships?

"Vetting" is the process of examination and evaluation by which one party ascertains the quality of another party writes Jeanne Cardona, Executive Director, Association of Ship Brokers & Agents (USA), Inc.

Although charterers have been vetting ships for quite some time, the concept has yet to reach the agency industry as a whole. INTERTANKO, in particular, has engaged in many discussions regarding the vetting of agents within this Associate Member Committee over the past couple of years. Multiport has provided the maritime industry with a "vetted" international agency network since 1978. They continue to strive to increase the quality standards for their members. However, Multiport certifies only one agent per country, which is very limiting for owners in a country like the U.S., home of close to 100 ports.

The agency industry in the States has been blemished by a number of high profile bankruptcies in recent years. When the agent who has been entrusted with significant sums of money to pay for services rendered on their behalf, goes bankrupt, the painful and expensive end result to owners and charterers is well known: the loss of millions of dollars. This fact alone has focused the spotlight on the need for quality agency service providers. ASBA (Association of Ship Brokers & Agents) agent members are keenly aware of the fact that quality agents, who are trained and professional, serve as the eyes and ears of their principals. Ship agents are crucial to ensuring that the shore based services are rendered in a timely fashion, thereby minimizing delays in port. ASBA agents also recognize that they operate in a largely unregulated industry where the barriers to entry are low or non-existent. Hence the dilemma, how can principals identify "quality" agency companies in the United States?

It has been now close to 6 years since ASBA's Agency Affairs Committee presented its concept of "Certification of ASBA Agent Members" to INTERTANKO, INTERCARGO, and BIMCO. These groups were all very interested, as the concept of the "vetting" of agents had been a topic of conversation among their members. This simple acknowledgement of approval was all that the Agency Affairs Committee needed to get the certification ball rolling toward the establishment of more stringent membership requirements for agent members. ASBA has taken the lead in our introduction of peer-led self-regulation. Now, with over two years since implementation, all ASBA agent members must be "certified". All new agent members have up to 6 months to submit all components of the Certification.

Although there are quite a number of elements to ASBA's Certification Process, the following are those specifically aimed at protecting principals:

- ❖ First, and most importantly, all agent members must submit to a Procedural Review performed by an outside

Certified Public Accountant who annually attests to the following:

- The member's accounting procedures are such that amounts due to/from principals are supported by detailed accounting and corresponds to the general ledger totals.
- All reporting must include a listing of cash receipts and disbursements by invoice for the selected sample voyages and agree with amounts to/from principals and in total at the end of the accounting period.
- All members must keep separate files by principal and all transactions must be supported by invoices and/or receipts. ASBA believes that it is difficult, if not impossible, to certify a member's financial stability and/or their longevity from annual financial statements

❖ The second component of ASBA's Certification is the demonstration of adequate insurance. All members must list ASBA as a notify party on the following insurance policies:

- General liability with a minimum of \$1M per event,
- Workmen's Compensation for US Longshore & Harbor Workers and
- Auto insurance as required by their state.

❖ Next, ASBA's agent members must insure that their agents and direct managers are trained and professional. Vessel boarding personnel and their managers must successfully complete the ASBA web-based proficiency exam to demonstrate that they are capable of operating to the required high standards.

❖ Last but not least, ASBA's agent members must agree that ASBA's Ethics and Grievance Committee is the governing body if noncompliance issues arise. This means that customers of ASBA certified agents can take comfort in the fact that they are appointing a company which is working to a defined standard and, in the unlikely event a problem occurs, can request that ASBA step in to assist them with problem resolution.

With these requirements it isn't hard to see why the ASBA Certification of Agents is a significant and welcome development, which is great news for principals.

Back to the concept of "Vetting". Given a definable standard in the US and hopefully world-wide in the years to come, shouldn't principals vet agents? Vetting agents will allow principals to easily identify "quality" providers. And now for the tough question, "How many quality providers will be able to compete when most charterparties provide for the appointment and compensation of ship agents as long as their fees are "competitive" where "competitive" is not defined?"

ASBA's agent members acknowledge that the use of the term "competitive" found its way into charterparty language many years ago in response to agents taking advantage of the charterer's agent clause and effectively gouging owners with very high fees in depressed markets. The tide has definitely turned, principals now use the "competitive fee" to their advantage and interestingly enough to the point where agency fees in the US today are very close to those of late 1980's and no longer in line with the financial exposure and responsibilities of the agent. The agency industry is indeed conflicted – many, especially those who are ASBA members, have chosen to be quality providers but find that they are unable to compete with, for lack of better words, sub-standard providers willing to provide agency services at predatory, bargain-basement pricing. The use of the charterparty term, "competitive", has effectively stripped out the quality element in the selection process. ASBA Agents are one of the only maritime industry groups who have voluntarily raised their requirements for membership and have taken a stand to represent quality. Principals can bring about this quality shift in the agency industry by supporting the ASBA initiative and requiring that all vessel calls in the States be handled by an ASBA Agent. ASBA members will find it difficult to sustain their quality status unless principals lead the charge

to acknowledge that the use of the term "competitive" does not bring about the necessary focus on "quality". ASBA members suggest the use of the term "customary or reasonable" where the fee must be mutually agreeable to both principal and agent. The principal will be provided with the security of obtaining reasonable fees for their agents' services while at the same time allowing them to select and appoint quality providers. Quality is not achieved without a significant financial investment on the part of ASBA's agent members. In order for ASBA's agent members to continue to hire, train and retain quality agents; principals must appoint and compensate these quality agents based on the customary, not competitive, fees for the port served.

In closing, embrace quality by asking your agents, "Are you ASBA Certified?" If the answer is "yes", negotiate a customary and reasonable fee for their services. If the answer is "no", have them give ASBA call. ASBA's goal is to represent all quality agents in the US.

ASBA Agents have pledged their support of INTERTANKO Members in their quest for Zero Detentions in the Poseidon Challenge. Success requires that all parties be committed to quality and an ASBA Agent is a principal's partner in meeting this challenge.

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