

FIATA

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ADVISORY BODY LEGAL MATTERS

Doc. ABLM/199
2012-11-27

To: Members of the Advisory Body Legal Matters

cc: Members of the Extended Board
Honorary Members of the Board
Association Members

From: Peter Maegerle, Manager ABLM
on behalf of the Chairman, Mr. Richard Gluck

Subject: Meeting of the Advisory Body Legal Matters
10th October 2012, at the Hyatt Regency Century Plaza Hotel, Los Angeles/USA

Praesentia as per **Annex I**
Agenda as per **Doc. ABLM/198**

Minutes

1. Opening of the meeting by the Chairman

The Chairman Mr Richard Gluck welcomed a large number of participants from all over the world to this ABLM meeting.

Richard Gluck continued with the following important notice to all participants: *"FIATA policy strictly prohibits any discussion or other communication the purpose or effect of which is to set prices, allocate markets or customers, engage in tying arrangements or refrain from purchasing any goods or services from any particular supplier or vendor. It is mandatory that you familiarize yourself with FIATA's written antitrust policy which the secretariat has made available to all participants."*

The following point 3-8 reordered and the items were accordingly re-numbered

2. Approval of minutes of the meeting held in Zurich/Switzerland on 16th March 2012 (Doc. ABLM 197)

The minutes of that Meeting held in Zurich/Switzerland were unanimously approved.

3. Legal Tips for Doing Business in the United States

This was a presentation made by Mrs. Sara P. Sandford (Garvey Schubert Barer, USA). Major points explained and discussed were: Immigration, General Business, Employment, National Security and Other Federal Government Regulations, Litigation and Ways to Conduct Business. She focused under the heading "General Business" especially on the issues of contacts and what one has to keep in mind in doing business in the US from a legal point of view. She mentioned that different State Laws exist but she also managed to pass information on how to register a new company in practical terms. On "Employment issues" she referred to the different laws in force – e.g. on overtime. For specific issues and for obtaining an extract of her presentation, the delegates have been guided to the booklet which was available made available to all participants: "Your Guide to Investing in the Freight Transportation and Logistics Industry in the United States".
(Secretarial note: The Presentation of Mrs. Sandford is attached as an Annex to these

minutes and is available on the FIATA web site).

4. ABLM ad hoc Working Group Cargo Release (in the US): recommendations to prevent release in advance of confirmation of payment

A specific report on the progress of the ad hoc WG Cargo release best practise (in the US) was provided by the Chair of the WG, Mr. Cameron Roberts, with two recommendations to reduce the risk that cargo will be released to consignees in the US before payment of the goods has been made. First, FIATA will recommend that no cargo be released without presentation of an original bill of lading to the shipping line. Second, the WG will develop a paper to be submitted to the Federal Maritime Commission requesting that the FMC warn NVOCCs not to permit release to a consignee without presentation of an original house (NVOCC) bill of lading, as this could be in violation of the US Shipping Act.

Mr Babar Badat (FIATA Senior Vice President, Pakistan) gave a brief on the issue from the Pakistani Forwarders and Government's viewpoint, mentioning that India and Bangladesh are facing similar problems and this threatens to undermine the credibility and use of shipping documents issued by freight forwarders in those countries. These two recommendations were accepted by the ABLM and later reported to the Extended Board, which also accepted them. Mr Roberts indicated that more investigations in the US will be made to make sure that the FMC has a thorough understanding of this problem so that it can assist the industry effectively in stopping these destructive practices which have the potential to damage the reputation and credibility of the freight forwarding industry.

The floor discussion showed that insurance issues are also a major point to take into consideration. Mr Mike Brown (ABLM Insurance Member, USA) answered questions raised from Malaysia in this regard. Mrs. Snowden (CIFA, Canada) mentioned the commercial pressure on delivery to the forwarder from the consignee and/or receiver of the goods, which plays a major role as well. Mr. Roberts mentioned that a telex release is as well very common and often used in the US. He explained to the audience the US way of handling express release shipments, and the potential for fraud that this presents.

5. The Law of Freight Forwarding in China: recent guidelines to be followed by the courts in China

The next highlight of this meeting was a summary by Dr Yang Yuntao (ABLM Vice Chair, China) of recent guidelines issued by the Chinese Supreme Court explaining and interpreting the legal rules governing freight forwarding in China. The Chair noted that Dr Yang's presentation is one of the most authoritative sources of information on this subject available outside of China, and it has been posted on the FIATA website (www.fiata.com > Downloads – ABLM). FIATA is also excited and honoured that its ABLM has been chosen as the forum through which this information is being disseminated. Dr Yang encouraged members to contact him directly if they had any questions.

6. Reports from ABLM members on legal developments in their respective regions

Mr. Robert Keen (ABLM Member, UK) provided other interesting comments on a recent UK Court Case concerning a BIFA member that upheld the BIFA Trading Conditions in regards of the enforcement of a lien. Mr. Keen highlighted some other aspects of liens, since BIFA has recently reinforced information on the incorporation of conditions and he mentioned especially the global conditions vs. local conditions. He also has given a short report on the Rotterdam Rules (UNCITRAL) from UK/Commonwealth perspective.

(Secretarial note: The information provided by Mr. Keen is enclosed to these minutes as ANNEX II).

7. Insurance committee report on current risk management problems

The insurance industry committee – formed after the HQ 2012 Session – reported (Mrs. Helen Arabamos, ABLM Insurance Member, TT Club London) on "Overview of Loss Prevention Issues in 2012". She mentioned especially the bad stowage of cargo in containers and trucks as to being the main reason for damage (35%) and whilst the theft of

goods before customs clearance, whilst in transit on trucks is more likely to occur in unattended parking lots than on the roadside. Mrs Arabanos stressed the worldwide importance of organized crime, not only in the eastern part of Europe, the importance of knowing customers, shippers – known consignor/consignee; not only forwarders but also sellers and buyer of goods should take these elements into consideration. All these suggestions would help to minimize cargo theft.

(Secretarial note: Mrs. Arabanos's presentation was made available to all attendees of the session and is available on the FIATA web site).

Mr. Mike Brown, (Avalon Risk Management, ABLM Insurance Member, USA) offered eye catching slides on vessel damage and truck transport claims, as well as interesting details on two court cases in the US. Further he reported about Damage on Roads/Bridges arising from the nature of goods being transported and the related responsibility of NVOCC's; he also highlighted the important role the insurance cover plays in this regard. He gave a list of the important action points which customers have to take into consideration when arranging transport of oversize, overweight, or dangerous cargoes.

(Secretarial note: The presentation made by Mr. Brown is available on the FIATA web site.).

8. Date and place of next meeting

The next ABLM meeting will be held in Zurich/Switzerland during the 2013 FIATA Headquarters Session, on Friday 15 March 2013, at the swissôtel in Zurich-Oerlikon, from 1015h- 1145h, Room: Zurich/Basel

The Chairman thanked all delegates for attending and thanked the interpreters for all their excellent work and closed the meeting at 1700h.