



SPECIALIST
PROFESSIONAL
INDEMNITY
INSURANCE

Claims review²⁸

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Getting more from ITIC

ITIC provides the most comprehensive errors and omissions insurance for businesses involved in the transport industry worldwide. ITIC also offers a range of additional covers which complement the core cover. This Claims Review has been produced to illustrate the types of claims that are paid within these additional insurances to give you the opportunity to consider how your business could benefit.

The additional insurances offered by ITIC are:

Directors' & Officers' Insurance: D&O insurance protects directors, officers and senior managers against claims arising from their decisions and actions taken in the course of managing their business.

Debt Collection Insurance: is very popular with ITIC's Members and is included in the ITIC Rules at Rule 10. The cover assists in the recovery of outstanding debts (such as commissions, brokerage, survey fees and port disbursements). It also covers the legal costs involved in disputes under agency agreements. This cover pays the legal costs incurred in the recovery of the debt, but not the debt itself.

Commission Income Insurance: ITIC's loss of commission insurance is designed specifically for shipbrokers. It will pay the shipbroker's commission if the charterparty is cancelled due to one of the insured perils. The cover is offered at two levels; the first covers commission lost from an actual or constructive total loss only, and the second is full cover and insures loss of commission resulting from a wide range of marine perils.

Cash in transit Insurance: The combination of cash in transit, cash on board ship and petty cash insurance offers ITIC Members the convenience of a single policy at a competitive premium.

Loss of Management Fee Insurance: Loss of management fee insurance is a vital cover for ship managers and covers the non payment of management fees as a result of the termination of a ship management contract through actual or constructive total loss of the ship under management.



ITIC
IS MANAGED
BY **THOMAS
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Loss of Management Fee Insurance

Loss of management fee covers the non payment of management fees as a result of the termination of a ship management contract through actual or constructive total loss of the ship under management.

Some ship management contracts will provide payment for a short period of continued employment for the manager but will not replace the lost fees beyond that work, which is what the ITIC loss of management fee insurance has been designed to cover.

High and dry

A ship under management ran aground off the coast of the UK during bad weather. Salvors and other industry experts spent several weeks trying to refloat the ship, however in the end the ship was declared a total loss by the hull underwriters. The ship manager, who had ITIC's loss of management fee insurance had their fees re-imbursed by ITIC.



Directors' & Officers' Insurance

Directors' & Officers' insurance (D&O) is a personal insurance purchased by the employer for the benefit of its directors and officers. ITIC's D&O product protects both individual directors from claims against them in person and also the company that has to indemnify these senior staff. D&O claims can come from:

- Third parties
- Shareholders
- Staff
- Regulatory authorities

Redundancy Requirements

A marine and transport services company made the difficult decision to reduce the number of its staff. Business volume had declined and this was the only way forward. On receiving notice from the company, several members of staff consulted an employment lawyer and subsequently began a legal action against the company and the individual directors responsible for their dismissal. At the same time, a member of staff who had also been dismissed began a separate legal action. Her allegation was that one particular director had always discriminated against her on the grounds of her being female and of a different religious faith. She considered that this was the reason why she had been made redundant. D&O underwriters were approached and lawyers appointed to defend the allegations against the individual directors. An allocation of costs was agreed for the defence of the company (not itself insured under a D&O policy) and the defence costs for the "insured persons" i.e. directors. At the subsequent employment tribunal, the individual directors were cleared of any wrongdoing and the company reached a settlement with the former employees. Despite the outcome the

D&O defence costs for the individual directors were significant and were met by the policy.

Company Registration Wrangle

A company director received a letter from the governmental authority responsible for overseeing the annual registration of company accounts.

The letter suggested that the director had submitted incorrect information and a fine was likely. An enquiry began. With the agreement of D&O underwriters, assistance was provided by a firm of consultants to show that no such breach of regulations had occurred.



Loss Prevention Advice

Getting more from ITIC is not all about insurance. ITIC also provides a wealth of loss prevention advice through the website, seminars and the ITIC publications of the Claims Review, Wire and Circulars. We also provide seminars to groups of Members, or in-house training to individual Members and insurance brokers. All this for no additional premium.

Poor contracts are bad for business and with this in mind ITIC are hosting a series of contract management workshops. These sessions will include details on the following:

- Formation of a contract
- Termination/damages
- Limitation clauses

The aim is to provide a practical review of basic contracts, to give you the knowledge that you will need to negotiate with your clients. To register your interest and find out more information about the ITIC Contract Management Workshops please e-mail us at: ITIC.invitations@thomasmiller.com

Website: Loss prevention advice can also be found on ITIC's website (ITIC-insure.com) within the Knowledge Zone. This easily searchable area of ITIC's website contains over 500 useful articles that ITIC has published on a variety of topics. It contains articles from every edition of ITIC's publications of The Wire, The Claims Review and The Intermediary, alongside news bulletins, circulars, standing trading conditions and sector specific suggested wordings.

Twitter: ITIC host a Twitter page and you are all welcome to follow us at: [@ITICLondon](https://twitter.com/ITICLondon)

Debt collection insurance

In the last 20 years, ITIC has recovered more than US\$130,000,000 in unpaid commission, outstanding port disbursements, survey fees and other debts for Members. The insurance pays the legal costs of pursuing the debt. Tact is vital in order to preserve commercial relationships and often a polite reminder is all that is needed to secure payment. If proceedings are, however, necessary, ITIC's specialist team will use whatever legal means necessary to try to recover the monies owed to you.

Arctic Arrest

A South American port agent advised ITIC that the owners of a cruise ship owed them over US\$ 25,000 relating to the costs of crew and supplies incurred during various calls. Reminders and chasers to the owners had not resulted in payment and it was decided that more aggressive action was needed. ITIC ascertained that the ship was chartered to a cruise line and was due to sail from a port in the Canadian Arctic for the High Arctic, and had no apparent plans to revisit South American waters. ITIC instructed its Canadian lawyers to arrest the ship where she was in the Canadian Arctic and within hours of the arrest being served the owners paid all the outstanding debts in full. The owners admitted that they did not think that anyone would be able to arrest the ship in such a remote place. The owner's miscalculation led to them having to pay not only the outstanding disbursements, but also the arrest costs.

Outstanding Survey Fees

A P&I club asked a marine surveyor to carry out a condition survey on a ship. The surveyor noted several deficiencies and, as a result, the P&I club requested the surveyor to conduct a follow-up survey. Although the P&I club copied the instructions to the shipowner, it was not clear whether the P&I club or the owner would be responsible for the survey fee. Unfortunately, the surveyor did not question this when accepting the instruction; he merely carried out the survey and sent his report to the P&I club. The invoice was sent to the owner. The owner did not pay and the surveyor asked ITIC to collect the debt. It became apparent that the owner was in financial difficulties and could not pay the surveyor's invoice. ITIC negotiated on behalf of the surveyor with the P&I club and the owner and, eventually, the invoice was paid.

Shipyard fails to pay sale and purchase commission

A sale and purchase broker acted for a shipyard in connection with the construction and purchase of three multi-purpose ships. Under the terms of a separate commission agreement, the shipyard was to pay 2% of the purchase price to the broker in four instalments at different stages of the construction of each ship. The instalments were not all made even though the construction and sale was accomplished; the brokers were owed considerable amounts of commission. Solicitors successfully attached property belonging to the shipyard, and eventually an amount of US\$ 515,0000 was recovered for the Member. Although the recovery took the best part of five years, and the legal costs were substantial, an outstanding result was achieved for the Member.

Ship for sale

A port agent sought ITIC's assistance in recovering a debt of over US\$ 100,000 from the owner of a vessel. The vessel made two calls at the port, having had to return for repairs soon after departure. The agent incurred various third party costs on behalf of the owner, including pilotage, towage, stores and repair-related costs, for which they had not been paid in full despite numerous email exchanges with both owner and managers. The owner had been unable to settle this debt as the previous charterers had pulled out of a charter leaving them out of pocket.

ITIC was advised that the vessel was soon to be sold, and the agent was understandably concerned that, once the ship was sold, they would not be able to recover the costs. The ship agent had been assured by the ultimate purchaser that their debt would be discharged once the sale had gone through, but they were unsure that this would actually be the case.

ITIC made contact with the owner and the purchaser, and asked to be shown a copy of irrevocable instructions from the owner to the purchaser to the effect that the agent's debt would be settled in full upon finalisation of the sale and before any payment was made to the owner. Having seen this instruction, ITIC were kept informed of the progress of the sale and had also noted that the subject vessel had two sister vessels against which action could be taken should owner and purchaser not keep to their promises. Immediately upon finalisation of the sale, full payment was made to the agent without any further delay.

Loss of Commission Cover

Loss of commission insurance is as essential for shipbrokers as business interruption and loss of profits insurances are to other businesses. The loss caused by, for example, the sinking of a vessel on a long term time-charter could seriously diminish a shipbroker's income.

ITIC offers two types of loss of commission cover, the simpler being loss of commission resulting from the charterparty being terminated due to actual or constructive total loss of a vessel. The more comprehensive cover includes

loss of commission due to a charterparty being cancelled for a wide range of marine perils, such as heavy weather, fire, piracy, collision, engine breakdown and negligence of master or crew. Cover is offered either on an individual declaration of a charter, sale or purchase, or the more popular annual cover for all fixtures concluded throughout the year. In the latter case, there is no need to make any further individual declarations as all fixtures within the limit of liability are automatically covered.

Constructive total loss commission insurance

The shipbroker who fixed the M.V. MSC NAPOLI for a period charter lost its right to commission when the ship, which was famously beached on the south coast of the UK, was declared a constructive total loss. The shipbroker insured his commission with ITIC and the Club paid US\$ 500,000 to the broker - the equivalent of the balance of the commission due over the remainder of the period charter. The shipbroker received his commission and had the advantage of it being paid up front.

Wider loss of commission insurance

A ferry on a regular route suffered many deficiencies, including engine breakdowns and machinery deficiencies and was often put off hire. Ultimately the charterers applied a clause in the charterparty which allowed them to terminate the charterparty due to the number of off-hire periods. The shipbroker had taken out ITIC's full loss of commission insurance and therefore claimed for the remaining period in which they should have received commission against the insured peril of the breakdown of the engine or equipment. The commission lost totalled US\$ 80,000 and was covered in full by ITIC.



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Cash in Transit and Money Insurance

Shipowners often require their agents or managers to deliver cash to ships whilst in port. The risks are obvious. The ship agent or ship manager needs insurance to cover cash when it is temporarily in his custody, whether during transport to the ship, in a strong room at his office, or in a safe at home or on the managed ship. ITIC provides a product offering this combination of insurances which can be offered either on a single occurrence or annual basis.

Theft from Master's cabin

A Master on a managed ship received US\$10,000 from the ship agent. The fact cash had been received was confidential and only the Master, the ship agent and the

ship manager's representative were aware of the transfer. The cash was placed in the safe which was located in the Master's day room, inside a cabinet. The next day the Master had to go ashore for two hours and on his return realised that the monies had been removed from the safe. The loss was reimbursed through ITIC's loss of money insurance.

Theft leaving agent's office

A port agent was asked by the owner to deliver US\$ 15,000 to the master. As the agent left his office, he was held at gunpoint and the money was stolen. The agent had loss of cash insurance from ITIC and the monies were reimbursed in full.

