THE WRONG BOX

A commercial ship manager received legal papers from cargo interests in connection with a cargo claim. The commercial managers immediately notified the lawyers for the cargo interests that they were "managers only" for the ship in question and therefore not responsible for cargo claims. The lawyers then pointed out that "owner's box" in the relevant charterparty contained the following words "[name of commercial manager] as managing owners".

On investigation by ITIC, it was established that the actual ship owner's P&I coverage did not include cargo claims. With the risk that the ship owner might not indemnify their commercial manager, ITIC made an approach to them to ensure that the claim was well taken care off.

Had it not been, there was a clear risk that the claim could be pursued against the commercial manager whom it might have been alleged, had failed to make their agency status clear. The advice from ITIC to this member on how to describe themselves on future charterparties was "[Name of commercial manager], as managers, on behalf of owners [name of owners]".

TOO TALL TO SHIP

A German commercial manager fixed eight specially designed "blade containers" from Spain to a port in southern Italy. Four of these containers were to be stowed under deck and four on deck in two tiers. During loading operations, the Spanish authorities refused to allow the vessel to sail with the four containers on deck due to insufficient visibility from the bridge. The permitted height of deck cargo was 5.15 metres and the containers as stowed were 5.7 metres high. As a result, two containers had to be unloaded and could not be transported.

This resulted in a loss of freight of USD25,000. This amount was claimed by the owner from the commercial manager, who had prior knowledge of the loading capacity of the vessel and, should, therefore, have known that booking the containers with these dimensions would put the stack above the permitted line of sight from the bridge.

CHECK THE SHIP BEFORE TAKING IT ON!

A ship manager accepted the management of a ship, but had not inspected it. In fact due to a high staff turnover in their technical department, nobody from the managers visited the ship. The owners went on board some ten months after it had been under management and were appalled at the condition of the ship and immediately made a claim against the managers for failing to manage and maintain the ship.

The ship was old and had probably not been in the best of conditions when the managers took it over, However, they had no proof of this. The owners brought a claim of over USD400,000 against the managers. There was no starting point/initial survey on which to commence negotiations.

DEFECTIVE MANUFACTURE OR DEFECTIVE DESIGN

A naval architect was instructed to design a vessel, to be used in a successful commercial passenger service, which could reach speeds of up to 20 knots in reasonable weather conditions. During sea trials in extremely unfavourable weather conditions, the vessel reached speeds far in excess of 20 knots. However, whilst the vessel was in its early days of service it suffered various cracks in the hull, which the claimant alleged was caused by inadequate welding design – not inadequate welding. The naval architect alleged that the cracks were not due to inadequate welding design but rather due to the vessel being operated beyond its recommended parameters in unfavourable weather conditions. The vessel was repaired but the cracks returned on a number of occasions. Obviously the service could not be closed whilst the vessel was in the shipyard, therefore another suitable vessel had to be chartered by the owner. A further dispute arose concerning the quality of the repairs by the shipyard and whether the alleged poor standard of repair work had led to further cracks appearing in the hull.

The owner brought a claim against the architect and the shipyard for the cost of repairs, loss of profits, loss of use of the vessel, chartering costs and diminution of value of the vessel. The matter was eventually settled for the cost of repairs and the cost of hiring a replacement vessel only.

International Transport Intermediaries Club Ltd. – ITIC – is a mutual insurance company with over 80 years of experience of providing professional indemnity insurance to companies involved in the transport industry. For further information on any of the products, services or cover provided by ITIC contact Adam Jacobson at: International Transport Intermediaries Club Ltd, International House, 26 Creechurch Lane, London EC3A 5BA, United Kingdom.

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THE PROFESSIONAL INSURER

ITIC Claims Review

Issue 16, January 2007

In this edition of the Claims Review, we are publishing a number of cases drawn from the various professions underwritten by the Club. The theme that runs through them, however, is that we must all take care throughout our working lives and that, if mistakes happen, ITIC is here to help. Therefore, the key is not to wait but to contact us as soon as a claim is intimated against you. Finally, we take this opportunity of wishing you a happy and prosperous new year.

NO BUNKERS IN JEDDAH

A bunker broker was instructed by a tanker owner to arrange bunkers at Jeddah. The broker agreed a price verbally with the bunker supplier's agent in Greece, and sent a confirmation by e-mail to the suppliers in Jeddah. Unfortunately, the e-mail "bounced" but the broker failed to notice the error message. The suppliers therefore never received the confirmation to supply the ship.

The brokers confirmed the stem to the tanker owner, but when the ship arrived at Jeddah the port was dry and the ship had to sail without bunkers. The next port of call was Haldia, India, where the prices were much higher and where 180 CST was the only fuel available.

The original price at Jeddah was USD303.75 per tonne, whereas the price at Haldia was USD435.50. The difference in price was approximately USD50,000, which the tanker owner recovered from the bunker broker.

DAMAGE TO HARPS

Marine surveyors based in the Far East were instructed by the insurers of a cargo of HRSG harps (which are metal tube modules used in power generation) to conduct a pre-shipment inspection and to advise on loading and stowage. The cargo was loaded at a Malaysian port and the loading was overseen by the surveyor, who verbally notified the cargo interests of his reservations about the packing of the harps and the stowage. The reservations were ignored.

On a voyage to Australia (the intended destination) the ship encountered heavy weather. When the cargo was unloaded it was found to be heavily damaged. An expert was appointed by the Club, who advised that although some of the damage was caused by bad packing, the major part of the damage was caused by bad stowage and inadequate lashing. The consignees sued both the ocean carrier and the surveyor. An arbitration took place and the consignees were awarded USD805,000, of which the ship owner paid USD491,000 and the surveyor paid USD314,000.

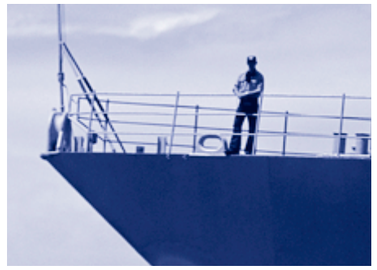
The marine surveyor's defence would have been much stronger if he had put his reservations about the packing and stowage in writing.

Issue 16, January 2007

TOO MUCH CASH TO MASTER

The owner of a ship requested its agent in Argentina to deliver USD20,000 to the master. The agent took every precaution in delivering the cash, using security guards and an armoured car. On arrival at the ship, however, the Argentinean customs refused to allow the delivery of cash because the necessary customs documentation had not been completed.

The customs refused to allow the ship to sail for three days while they carried out an investigation. Customs argued that the movement of cash from Argentina in amounts greater than USD10,000 had to be declared, in the same way that international travellers had to make a declaration if they are carrying more than USD10,000 in cash.



Local lawyers eventually succeeded in demonstrating to customs officials that there had been no breach of regulations. However, the agent received a claim from the owner for USD103,000 (the cost of the three day delay) on the grounds that the agent should have cleared the movement of cash with customs before the cash was taken to the ship.

AN UNUSUAL LETTER OF INDEMNITY

A ship owner demanded that a ship agent in West Africa sign a Letter of Indemnity in his favour before the ship arrived at the port. The Letter of Indemnity was, according to the ship owner, a requirement of the ISPS Code and provided that the agent:
a) agreed not to claim against the owner, regardless of the owner's responsibility in the matter, negligent or otherwise; and
b) agreed to indemnify and insure the owner against any claims and expenses that result from the performance of the services provided by the agent.

Owners often attempt to obtain this type of Letter of Indemnity from parties boarding the ship such as engineers, working gangs, students, cadets and even P&I personnel.

Owners also try to obtain such Letters of Indemnity from marine surveyors (see the article in the Intermediary 2006 on "Surveyors Signing Indemnities). It is not usual or reasonable, however for this type of Letter of Indemnity to be signed by port agents nor is it a requirement of the ISPS Code. The Member referred the request to the Club, and following advice refused to sign the Letter of Indemnity as its contents were totally unacceptable, and could prejudice the terms of their insurances with the Club and other insurers. The ship owner, under the guise of complying with the ISPS Code, attempted to contract out of his liabilities. Agents should always refuse to sign such indemnities.

FRAUDULENT LABELS

21 forty foot containers of acetate tow on pallets arrived at a US port from Brazil. The shipping line instructed their US agent to arrange for the pallets to be unstuffed from the line's containers and reloaded into containers belonging to another line for onward carriage to Hong Kong.

The Brazilian shippers sent descriptive labels to the US ship agent, with the request that they be passed to the terminal for affixing to the pallets of acetate tow before they were reloaded into containers. Several months later the US agents received a writ issued by a Hong Kong court for USD3,000,000 accusing them of colluding in a fraud. The new labels which the agent had passed to the terminal said "Made in the USA" whereas the acetate tow was of Brazilian origin. The case was successfully defended, but not without the expenditure of considerable time, trouble and legal costs.

NOT WITHOUT INTEREST

A North American ship agent acted for a shipping line over a twelve year period. During the period of the agency, the agent had paid local suppliers on behalf of the line, but was not reimbursed until many days later. The line eventually set up their own agency company at the port and fired the original agent. The agent, when finalising their accounts, calculated that they were owed a considerable amount in interest on the funds which they had advanced on behalf of the line over the years. The line refused to pay and the matter, in accordance with the terms of the agency agreement, was referred to arbitration in New York. The arbitrators found in favour of the agent and awarded them interest of USD175,000.

NO "ON-DECK" NOTATION

A ship agent in the Far East booked four packages of spare parts and materials for a road construction project for an East African port. The packages were stowed on deck by the carrier and the mate's receipt was marked accordingly. Unfortunately, due to confusion in the agent's office, the notation "shipped on deck at shipper's risk" was inadvertently omitted from the bill of lading. A claim for salt water damage in the amount of USD220,000 was made against the carrier. If the bill of lading had been claused for on deck stowage, the carrier would have been able to reject such a claim. The carrier eventually settled the claim for USD171,000 and obtained an indemnity from the load port agent.

ONIONS AND OTHER DELICATE COMMODITIES

ITIC has, over the years, paid out large sums in respect of claims for damage to refrigerated cargo due to mistakes by ship agents in passing information on temperatures. However, in carrying cargo, it is not only the temperature which needs to be correct, but it is also vital that other carrying instructions are passed along the line, particularly where cargo will be stored in more than one port terminal and transshipped to more than one ship.

One example involves a cargo of onions in a 40ft dry container. The agent was instructed that the doors of the container should be tied back and left open. This instruction, although given as part of the booking, was not passed on to the operational staff involved. The result was the total loss of the onions, plus storage and destruction costs.

Another example was a booking of several containers of cocoa butter. The booking note provided that they should be stowed away from heat, ie. in the middle of the stow and away from the engines. The special instructions were complied with by the first carrying ship, but were not passed on by the agent to the transshipment port agent and the cargo sustained heat damage on the second ship and was a total loss.

In a third case, two containers of flower bulbs shipped from the Netherlands to South Africa were destroyed because the agent failed to pass on instructions for container vents to be left open.

In a fourth case, a ship agent put the instruction to carry a container of live worms at +4 degrees Centrigrade on the reefer manifest, but failed to pass on an instruction to keep the air vents open. When the worms arrived approximately two thirds had suffocated. As the worms were intended for fishing, dead worms were of no use. The value of the dead worms was USD68,000.

FAILURE TO REMOVE CLAUSE

Failure to properly clause bills of lading can cause many different problems. One example of this is a failure to make it clear that cargo is not loaded under deck. Ten containers of expensive electronic equipment were shipped from the USA to Australia. The bills of lading were prepared by the shipper's agent, and each bill of lading was claused "below deck stowage required". The bills of lading were then sent to the line's agent for checking and signature. The line did not guarantee under deck stowage and the agent was instructed to delete the clause "below deck stowage required" before signing the bill of lading. During heavy weather eight containers were lost overboard, one of which belonged to the shipper of the electronic equipment. It subsequently emerged that the agent had failed to delete the clause requiring under deck stowage. The line faced a claim in excess of USD500,000 from cargo insurers which, but for the agent's error, could have been settled for USD500 under the package limitation provided for in the US Carriage of Goods by Sea Act.

LATE ARRIVING SUGAR

A sugar trader booked a part cargo of 6,000 mt bagged sugar at Durban for Aqaba for on-selling to Iraq, where there was a severe sugar shortage. The charterparty contained the clause "first in/last out" which normally means the ship would proceed directly to Aqaba. The broker for the owner failed to make it clear to the charterer's broker that the ship was on liner service and would call at Beira, Mombasa, Dar es Salaam, Massawa and Jeddah before it would reach Aqaba. The ship took about three weeks longer than she would have done if she had gone direct from Durban to Aqaba, and in the meantime other ships carrying sugar had arrived.

The sugar trader/charterer sued the ship owner for USD535,000 on the basis that the late arrival of the sugar had resulted in the loss of their sale of USD385,500 and they had also incurred storage, port and transport costs of USD150,000. The charterer's broker had been informed that the ship was on liner service from South Africa to the Mediterranean but had not been specifically informed of the calls at East African ports. The owner's broker believed that the charterer was aware of the ship's itinerary although the information had not been passed to the charterer's broker. The charterer instigated arbitration proceedings against the owner, and was awarded the sum of USD110,000, which the owner recovered from the broker.

"Failure to properly clause bills of lading can cause many different problems."

NOT ENOUGH SKINS

A broker in northern Europe was appointed by the owner to exclusively market a tanker. A voyage charterparty was arranged for the carriage of 20,000 metric tonnes of vegetable oil from the US Gulf to the Mediterranean.

Approximately one week prior to the intended loading date it was realised that the tanker was not suitable, having only a single skin hull. Under the USA OPA rules a single skin tanker was not allowed to lift persistent oils after 1st January, 2004.

The charterer eventually had to charter two other ships at much higher rates to fulfil their obligations and claimed a loss of USD166,000 from the owner. The claim was overstated and was eventually settled for USD70,000, which the owner claimed from his broker.