

# ITIC Claims Review

Issue 17, March 2007



Welcome to the Spring 2007 issue of the ITIC Claims Review. This edition contains a selection of cases which the Club has handled over the past year. We trust that the scenarios will be of interest to you and assist in identifying any potential exposure to claims. Please remember that, in the event of a potential claim arising, it is essential that you notify ITIC as soon as possible.

## EAST MED OR EAST GULF

A shipbroker fixed a vessel to carry soya from Argentina with a choice of two discharge ranges: Eastern Mediterranean and Middle Eastern Gulf.

While the vessel was loading, the receivers advised that the discharge port was likely to be Eastern Mediterranean. However, before loading operations concluded, the Charterers advised the brokers that the discharge port was to be in Middle Eastern Gulf. The brokers unfortunately missed the message and did not immediately pass it on to the Owners.

By the time the brokers realised their mistake and passed on the message, the vessel had set sail and was steaming North up the Atlantic. The Owners therefore had a choice: they could direct her to turn around and head South, round the Cape of Good Hope and up into the Gulf; alternatively, they could direct her to continue

to steam North, pass through the Mediterranean and transit the Suez Canal to reach the Gulf.

There were numerous variables to factor into the decision. The vessel would be off-hire for a few days if she turned around and headed South; she would need to take on bunkers whichever option was chosen, and they were cheaper at Gibraltar; the Suez transit would be likely to cost about USD 80,000, but a rebate might be possible. After careful analysis, it was decided that the vessel would continue up to the Mediterranean and pass through the canal. The total claim amounted to almost USD 100,000. The Club indemnified the brokers less their deductible.

## ARREST: NOT ALWAYS A QUICK REMEDY.

Over the years, ITIC has arrested many vessels in order to recover outstanding debts for Members. Where an undisputed debt is involved the majority of arrests result in the debt being paid immediately by the vessel's owner or charterer to avoid the costs of detention. However, there have been several instances when the Member is not paid due to the poor financial situation of the debtor.

In one such case ITIC arrested a vessel in France in order to recover a ship agent's outstanding port disbursements. The ship owner eventually managed to provide security to release the vessel, rather than paying the debt. This meant that, in order for the security to be released, a court judgment had to be obtained. French law requires that the judgment had to be obtained either from the country

where the debt was incurred (in this case Panama), or at the place where the debtor's place of business is located (in this case British Virgin Islands).

Legal representatives in Panama advised that it could take two years to obtain a judgment, and possibly a further two years if there was an appeal. Luckily for the ship agent, a judgment could be obtained from the British Virgin Islands, where the legal system is based upon English law, in a much faster time. Not all legal systems give the plaintiff an option as to where the court judgment can be obtained. In some jurisdictions a case on the merits would have to be commenced in the courts of the country where the vessel was arrested and could take many years to reach a conclusion. Members cannot always expect a fast result when an arrest is made.

## AN INNOCENT SURVEYOR HAS TO PAY

A surveyor in Australia was appointed by a bank. The instructions provided to the surveyor were clear. They were to confirm the value of the vessel being built at a local yard and to certify to the bank when additional funds could be drawn down during the construction period. The bank confirmed that the surveyor was not required to monitor the standard or quality control of the ship's construction nor its conformity with design.

Defects were found in the ship after construction and the owners sued the ship builder, the surveyor attending to the quality control of the build and also the surveyor acting for the bank. Legal proceedings against all parties took two and a half years to conclude. A settlement of USD 235,000 was reached at mediation with all parties contributing. The Club agreed to contribute USD 23,500 towards the total settlement and a further USD 25,000 was incurred in legal costs.

ITIC always instructs marine surveyors to obtain clear instructions and/or to confirm in writing the exact services they are to provide. Unfortunately this does not always protect surveyors from legal action. This is an unfortunate example of where the cheapest option is for a surveyor to contribute to a settlement even though his instructions and responsibilities were clear from the very beginning.



## TUG: UNSAFE LIFTING

A marine surveyor received instructions to advise on the stowage and lifting of a tug to be carried onboard a ship from the Far East to Europe. The marine surveyor provided advice as to how the cradle, in which the tug was to be carried, and the stoppers, which were welded to the hull of the tug, should be constructed. The purpose of the stoppers was to prevent the lifting wires from cutting into the sharp edge along the tug's hull. The marine surveyor also sent a representative to the Far East to supervise the preparations and to confirm that the arrangements for lifting the tug were suitable.

The lifting operations commenced, but, after 30 minutes, they had to be stopped because the stoppers had moved up the side of the tug resulting in the hull being buckled by the lifting slings. The tug had to be dry-docked so that the stoppers could be strengthened and the inside of the hull reinforced with steelworks. Unfortunately, by the time this work was finished the ship had sailed and the tug had to await the arrival of another ship before carriage to Europe. The tug owner claimed his additional costs and losses resulting from the delay from the marine surveyor.

*“...resulting in the hull being buckled by the lifting slings”*

## A TALE OF TWO SEA CHARTS

A tanker had changed from hard copy sea charts to electronic sea charts and it was a Flag State requirement that the second officer had an ECDIS Certificate. Unfortunately the ship manager overlooked this requirement and the second officer assigned by the ship manager did not have this Certificate. A subsequent routine vetting inspection by one of the oil majors revealed the mistake and the oil major informed the ship manager that the ship had been put on technical hold. A technical hold can only be lifted after a new oil major vetting, which can take up to six months. In the meantime the trading flexibility of the tanker had been reduced and the earnings had reduced similarly. The owners claimed the difference in earnings from the manager.

## MISSED EVIDENCE



A naval architect was instructed by the owner of a vessel to investigate the cause of continued cracking in the hull. The report produced by the naval architect attributed the blame to the original architects for their “negligent” failure to properly test the natural frequency of the plates, which caused excessive vibration of the hull.

On the basis of this report, the owner issued proceedings against the original architects. The original architects defended the claim successfully

as they were able to produce evidence that they had adequately tested for the natural frequency of the plates and that any further testing would not reasonably be required. It subsequently turned out that the naval architect had this evidence in his possession before he produced his report, but had failed to realise its significance. The owner claimed from the naval architect the wasted costs of pursuing the original architects as a direct result of relying on their defective report.

## ITIC FORUM 2008 - 1st & 2nd OCTOBER 2008

The 2008 ITIC Forum will take place at the Dorchester Hotel in London and offers a unique opportunity to hear leading individuals from the transport industry speak on cutting edge subjects. Further information will follow via the ITIC news service and [www.itic-insure.com](http://www.itic-insure.com).

## MISDIRECTION: TALES OF WOE

Millions of containers are sent around the world, being offloaded and reloaded onto different ships at different hub ports, and 99.9% of them arrive at the right place, on time and undamaged. However, inevitably there are misunderstandings in bookings when so much cargo is on the move. Examples of these situations are illustrated below.

Ten containers of steel were booked by a shipper for Kaohsiung, but the booking clerk in the liner agent's office had never heard of Kaohsiung and booked the containers for Cochin. By the time the error was discovered, the ten containers were at sea. Such things happen, and the cost should have been restricted to the additional costs incurred in unloading and reloading the containers and shipping them from the west coast of India to Taiwan. The problem was that the containers in which the steel was

loaded belonged to a shipping line who refused to allow its containers to be sent to Taiwan, so the steel had to be unstuffed and restuffed, and in addition there were problems with the Indian customs authorities. The total cost of sorting this out eventually reached approximately USD 50,000.

In another case, a ship agent in Malta booked four containers of dried fruit destined for Melilla, Spain (port code MLN), but inadvertently used the port code for Manila (port code MNL). The containers did not reach Melilla in time for Ramadan, which is what they were intended for. Containers for Santiago have been sent to San Diego, containers for Houston, Pennsylvania have ended up in Houston, Texas. The list is endless and the cost of rectifying misdeliveries is sometimes considerable.

## WHO PAYS WHAT?

A port agent in a small port on the south west coast of England was appointed by a German ship owner to attend the call of a ship. The quay where the ship berthed was privately owned. The port company made two charges; moorage dues, calculated on the cargo tonnage and payable by the ship owners, and harbour dues, also calculated on the cargo tonnage but payable by the receivers. The port agent included the moorage dues in the pro forma disbursement account sent to the owner. However, when the final disbursement account was sent to the owner he refused to pay the dues on the basis that the fixture of the ship was on the basis of "free taxes/dues on cargo and/or freight". The owner said that the moorage dues, which were calculated on the basis of cargo discharged to the quay, were not for his account. No amount of explanation on the part of the port agent, ITIC and the port company could convince the owner that, although based on cargo tonnage, the moorage dues were a charge on the owners for the use of the quay. The port turned its attention to the port agent, demanding payment from him. Fortunately, the ship called at the port again, and the quay company obtained their payment.

## INDIAN TAX

A vessel was fixed on voyage basis from one Indian port to another. During negotiations, before the owners made a firm offer on the freight rate, they asked their broker whether Indian freight tax would be the same for cabotage as it was for export voyages. The broker checked with an Indian ship agent and inferred from the conversation that the situation was the same for both: a tax rebate was available for both types of voyage. The owners factored this into their voyage calculations and made an offer to the charterers on the freight rate they would be prepared to accept, which the charterers accepted.

Unfortunately the brokers had misunderstood what the local ship agent had said. The Indian Income Tax Act (s.44(b)) provides that 7.5% of the total freight amount is

deemed to be profit and taxable at 40%. There is also a surcharge and the overall tax rate on the total freight was equivalent to 3.135%. This tax is only recoverable for voyages loading in India and discharging elsewhere; there is no rebate on cabotage.

By not factoring the tax into their voyage calculations during negotiations, the owners had inadvertently put themselves at an advantage over other owners in the market. This enabled them to secure the business, for which they made a profit without receiving the rebate. In addition, the brokers had made it clear to the owners that the information on the tax had been provided by someone else and the brokers were not holding it out as a matter of fact. In view of these two factors the owners agreed to accept half the tax amount from the broker.

## RIGHT NUMBER, WRONG BOX

ITIC received notice of a claim faced by a liner agent at an African port. The agent had arranged for cargo to be delivered to an inland destination in a forty foot container leased by his principal. In due course a forty foot container, owned by the same leasing company and bearing the same container number, was returned to the port. It was not until the container arrived at a depot in the United States some months later that it was noted that the container number engraved on a metal plate on top of the container was different to the number stencilled on the sides. The container was one which had been leased to another shipping line and had been missing since it had been delivered to the same inland destination. The consignee had apparently (for reasons of his own) stencilled a different number on it. The fact that the box which had disappeared was brand new could have been the reason for the switch. The principal received a claim from the leasing company for the replacement value of the missing container; and a further claim from the other shipping line for per diem leasing costs. The principal held the agent liable for both these claims.

The ship agent's obligation is to exercise reasonable skill and care in performing the agency services and, if he fulfils this obligation, he is not liable for losses sustained by the principal. It was the agent's job to make sure that his principal's leased container was returned to the port undamaged. To all appearances the box had been returned, and the agent had fulfilled his duty to act with reasonable skill and care. The principal's claim was rejected by the Club with the suggestion that the shipping line recover its losses from its customer.



## ADDITIONAL INSURANCES

In addition to our standard professional indemnity cover, the following products are also available from ITIC:

### LOSS OF COMMISSION

When a ship is put out of action, the income of ship brokers and ship managers can dry up through no fault of their own. ITIC assists brokers and managers by offering loss of commission cover. The cover is available either on a fixture or an annual basis and in different packages, ranging from total loss only cover to loss of commission caused by the loss of a ship, or delay or damage to cargo, due to a wide range of marine perils such as heavy weather, fire, piracy, collision, engine breakdown and negligence of master and crew.

### CASH IN TRANSIT AND MONEY

Shipowners often require ship agents to deliver large amounts of cash to ships in port. The risks are obvious. The ship agent will need insurance to cover cash when it is temporarily in his care, kept in a strongroom at his office or in a safe at home. ITIC provides a product offering this combination of insurances which can be offered either on a single occurrence or annual basis.

### DEBT COLLECTION

Over the past 15 years, ITIC has recovered USD 80 million in unpaid commission, disbursement accounts and other debts on behalf of our members. This insurance pays for the legal costs of pursuing your claim. 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, our specialist team will use whatever legal means necessary to try to recover the monies owed to you.

Please contact your insurance broker or your ITIC underwriter, or visit us at [www.itic-insure.com](http://www.itic-insure.com), if you would like to obtain a quotation for any of these additional insurances from ITIC.

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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