



THE
PROFESSIONAL
INSURER

Welcome to the first of three Claims Reviews for 2009. In the current economic climate, it is even more important to be aware of the types of claims that the Managers are seeing. When your clients are under pressure, you need to ensure that you confirm all instructions in writing. You also need to chase outstanding accounts earlier rather than later. ITIC has seen a drastic increase in the number of debt collection files in the last two months alone. This latest Claims Review provides you with some examples of the problems the Managers are seeing.

claims review

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Be Wary of “First Class Charterers”

Norwegian shipbrokers were involved in negotiations for a voyage charter. When entering the market, they described the charters as “first class.” It was also alleged that during the negotiations, they made positive representations that the charterers had the money to perform the fixture. Ultimately, however, after the voyage had been fixed, the charterers did not perform the contract. The owners obtained an arbitration award but the charterers had no assets to satisfy it.

The owners subsequently sued the shipbrokers, stating that they had been induced into the charterparty because of misrepresentations made regarding the financial standing of the charterers. The claim totalled approximately USD 3 million. In its loss prevention presentations, ITIC has discouraged the use of the expression “first class charterers”. If, as is often the

case, brokers do not wish to identify the charterers, it is better to use the more neutral “private clients” than anything that could imply a financial reference. In this case, although many of the representations were oral, lawyers advised that there was a real possibility that the broker could be held liable. Accordingly, a settlement was agreed at USD 650,000.

A Fruity Problem

A cargo of South African grapefruit arrived in a far eastern port. One of the duties of the ship agent was to arrange for a surveyor to go on board and, amongst other things, check that the seals on the hatches were intact. It is a requirement of the local customs authorities that container seals are intact before discharging.

While on board however, a misunderstanding led the crew to cut the seals on this particular cargo. As a result, the customs inspector delayed the start of discharge operations while the authorities clarified exactly what happened. This delay resulted in various costs, such as cancellation charges for the stevedores.

The owner attempted to blame the agent because the agent had appointed the surveyor on behalf of the owner. ITIC provided legal assistance to the agent and clarified that even if it could be shown that the surveyor was responsible, the agent was not liable for the actions of a party he had appointed.



Cracked Keel

A naval architect was contacted by a company to design a yacht for a race.

The yacht was built and sailed over 10,000 miles without fault. However, when the yacht was lifted from the water, several cracks were noticed along the keel blade. Both the manufacturers and the naval architect were notified that cracks had appeared. The naval architect subsequently realised that an error had occurred when transposing the design specifications onto the blueprint drawings which were then passed onto the manufacturers. This error in design meant the keel did not meet the strict strength specifications required of a racing yacht. The naval architect informed the company of their error. However, a subsequent survey completed by a third-party surveyor found the cracks to be caused by incorrect manufacturing techniques.

The manufacturers offered to repair the keel but if they had done so it would still have been unsuitable for racing due to the design error. ITIC agreed that a keel of the correct specification should be supplied and additional costs were settled by the Club.

Don't Forget Detention Charges

A ship agent was advised by a shipping line that with effect from 1st January 2007, all containers in Indian Ports would be subject to a new import detention charge handled on behalf of their principal. These charges are paid by the importers to the agent, who receives the funds on behalf of its principal when the importers take delivery of the containers.

Unfortunately, due to an oversight, the member failed to apply these new charges and therefore the sums received from the importers were less than they should have been.

The member reported the claim to ITIC who instructed the member to write to all importers attempting to explain the situation and recover the difference between what was paid and the charges that should have been received. Some money was recovered this way and ITIC settled the balance.



High Speed Ferry and Increased Fees

A company ordered a ferry from a shipyard. A naval architect member was appointed to supervise the build but the design had been produced by another naval architect. As the vessel was to be used on an international route, she had to conform to High Speed Craft (HSC) regulations, which are more stringent than regulations for domestic craft.

Several meetings took place over the nine month build period between the yard, the member and the classification society. It appeared that the owner and the yard wanted to build the ferry cheaply. The HSC regulations specify certain requirements over the build of elements of the ferry. However, the classification society did not raise these issues until close to the end of the build period. The issues meant that the yard had to undertake additional work, which implied extra costs. It attempted to pass these on to the member by alleging negligence on the part of the member.

ITIC represented the member at a meeting with the yard and pointed out that there was no evidence of negligence by the member, whose only role was to supervise the build. The yard subsequently withdrew the claim.



One Berth, Two Buyers

A berth broker member was engaged by an owner of a berth to sell it on his behalf.

Negotiations commenced with one buyer who continually required changes to the memorandum of agreement (moa) proposed by the owner. The owner tired of this and instructed the broker to find another purchaser. The broker found one and negotiations continued between owner and both potential purchasers.

After some time, the owner tired of negotiating and, via the broker, passed a message to both purchasers requiring completion within 24 hours. The broker passed this message to the purchasers the next day.

The second purchaser returned an unamended and signed moa within the 24 hour period. The first purchaser returned the moa with amendments later that day, after the 24 hour period has expired.

The owner, broker and second purchaser considered that they had a binding contract. The first purchaser was displeased and obtained legal advice stating that, as a matter of law in the country where the berth is located, he had a contract with the owner, despite the amendments he required.

ITIC doubted that the first purchaser's contention was right and obtained advice from a local lawyer. This advice confirmed that the first purchaser did not have a binding agreement and the buyer and seller were under no obligation to him. ITIC also advised the broker that this was a particularly dangerous practice for the principal to undertake.



Lost Leather and Dodgy Depots

Fifteen pallets of leather were stolen from a depot in Argentina. The ship agent was held jointly and severally liable with the ship owner for the value of the cargo, which was USD 260,000. The ship owner did not pay the claim and subsequently sold their business to a new company. The ship owner's P&I Club also advised ITIC that their former member still owed premium and, as a result, the club would not be able to pay a claim.

Unfortunately, the defence of the ship agent by the P&I Club appointed lawyers had not been on the basis of their agency status. It was too late to amend this by the time the ship agent notified ITIC of this claim.

In this circumstance, ITIC paid USD 170,000 towards the claim and began recovery proceedings against the depot, from which the pallets were stolen.

The court found in favour of the ship agent and a recovery of USD 151,000 was made.

Slow-Steam Ahead

A gas carrier managed by one of ITIC's members suffered main engine damage. The owners conducted a survey on the main engine and found that the piston ring had been subject to excessive use and caused damage to the main engine. The manufacturer of the piston ring recommended a working life of 8,000 hours but the manager allowed it to be used for slightly longer. The owners claimed that the member's negligence caused the damage to the engine.

The ship was slow-steamed during the member's management and it was suggested that this slow-steaming also added to the damage. When the damage to the main engine came to light, the manager replaced the piston ring but, to save fuel, the ship continued at 50% speed.

ITIC obtained technical analysis of the claim. Slow-speeding over extended periods is widely known to risk damaging the engine. The decision to slow-steam was taken by the owner and ultimate responsibility rests with him. In addition, the owner's representative on board, the chief engineer, would have seen the damage as it developed and should have reported it to the owner. It also came to light that the ship had been slow-steamed under a previous manager for a longer period. In view of the fact that the ship was slow-steamed for a longer period before the member took over her management, most of the damage would have occurred already. There was no conclusive proof that the damage to the engine was not caused fundamentally by the slow-steaming and that the late replacement of the piston-ring had a negligible impact.

This analysis was the basis of a strong defence and settlement was agreed for a nominal amount.





Appointing Party and Ship Owners: Company Confusion

An English ship agent accepted a nomination for the agency of a ship from a company in St. Petersburg. The appointment message simply read "please advise D/A, restrictions and timetable in your port for our ship going to discharge about ABT 1,700 mts from Amsterdam". Advance funds were requested but none were received. The ship arrived and departed and, following chasers for payment, ITIC's assistance was requested.

An investigation revealed that the owners of the ship were, in fact, a different company in Russia. ITIC contacted the company explaining that they had contracted as principals and owed the money. This was denied and the Russian company claimed they had contracted as agents only. ITIC's legal correspondent in St. Petersburg was

appointed to approach them, explaining that they should honour their obligations or, at the very least, compel the owners of the ship to settle the debt.

By chance, the same company once again contacted the agent with a nomination for a ship, at which point the Agency Manager pointed out to them that they would be hardly likely to assist given that, the last time they had done so, they had gone unpaid for their work. Payment was then made. This case demonstrates the importance of the way people contract. Often, ITIC has been asked to defend ship managers and agents who have not made their agency status clear. For more information, please see the March 2000 Intermediary article 'Signing off 2: Purchase orders.'



Heavy Fuel Oil Issues

A bunker broker member was contacted by an owner to order 900 M/T IFO180CST for delivery nine days later. At the time of ordering, the price of 180CST fuel was about USD 623 M/T. In error, the member ordered 900 M/T HFO380CST. The mistake came to light only when the bunkers were supplied to the owners. They rejected the bunkers. A stem of 180CST fuel was then arranged, but at a higher price of USD 672 M/T. There was no defence and ITIC paid the claim.

ITIC Publications

ITIC is implementing a range of new publications to better serve you, the members. As ITIC's membership grows and diversifies, it is becoming increasingly difficult for the current publications to serve every member. ITIC intends to produce sector-specific digital periodicals, one each for professionals in ship agency, ship broking, ship management, marine surveying, naval architecture and also the rail, aviation, and offshore industries. There will also be a digital ITIC newsletter as well as continued issues of the Claims Review and relevant circulars. We look forward to sending you these new publications. Please don't forget to advise the Managers of any change to your email address. All these publications are also available on our website, www.itic-insure.com

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