Claims Review

Turkish trouble

The Turkish office of an international agency group was appointed to handle a ship's call at their local port. The owner was an existing customer of the group but had not called at that Turkish port before. Turkish regulations prohibit any vessel directly or indirectly related to the Republic of Cyprus from calling at Turkish ports.

In the agent's-pre arrival messages to both owners and charterers they mentioned that anything linking the vessel to Cyprus could lead to the ship not being allowed to berth.

In spite of the agent's express warning to their principal a document was sent to the agent showing the address of the Panamanian registered owning company as being c/o a company in Cyprus. The agent failed to notice the address and the documentation was forwarded to the authorities. The vessel was not allowed to berth. The agent's position was that the owners were warned about the embargo of all things Cypriot, and failed to take the necessary action. The owner claimed the agent should have carefully reviewed the document.

The owner deducted their alleged losses from other sums due to the agency group. Ultimately the owner told the agent that they would accept 50% responsibility. This still left the agency group with a shortfall of US$50,000 which was reimbursed by ITIC.

Very Taxing

A crew manager acted for an owner operating in Norwegian waters. The crew manager arranged for crew from the Philippines. The crew manager was required, on behalf of the owners, to report the presence of the crew in Norway.

However, the obligation was also to not only report the dates of entry into Norway, but also dates of exit. The crew manager failed to advise the dates of exit. The owner was fined by the Central Office for Foreign Tax Affairs (COFTA).

The owner appointed a well known accountancy firm to appeal the amount of the claim. The fine was originally US$150,000, but was reduced to US$100,000 on appeal.

The owner brought a recovery action against the crew manager for the fine and the auditor's costs of US$12,000. ITIC reimbursed the crew manager for the full amount of the claim.

Remit regarding a refit

A yacht manager was contracted to provide crew management and ISM consultancy for a superyacht. Although the manager was not contracted to provide technical management, the owner sought their advice on two refits. The manager reviewed the scope of works and the budgets from the refit yards as a favour to their client.

Unfortunately, both of the refit budgets overran and the owner claimed that the managers had been in breach of their duty of care by failing to recommend suitable repair yards, failing to budget properly and failing to properly supervise the refits. The owners alleged that while the management contracts had said that the manager was not providing technical management they had in fact done so.

A formal claim was made against the manager for €900,000 and a sole arbitrator was appointed by the parties.

The manager denied that they had accepted any responsibility for the refits. The owners own staff had chosen the yards. The manager had commented on the scope of works and the budgets provided but had not managed the refits. They had simply been kept in the loop in correspondence. The owner claimed that he had expected his managers to take an active role.

In addition, the majority of overspend was due to the works which were required by the yacht's classification society. The owner had not suffered a loss due to the alleged negligence of their manager. The owner was obliged to pay the costs to keep the yacht in class.

The matter went to mediation where the claim was firmly rebutted. Ultimately ITIC agreed to the payment of US$25,000 in settlement. This was far less than the owner claimed he had incurred in legal costs. ITIC also paid the substantial costs of defending the claim of over US$110,000.

Although the owner's allegations lacked merit the claim is an illustration of the dangers of informally providing advice outside the scope of the contract.

Not so peachy

A clerical error by a ship agent meant that the temperature on a reefer container, carrying a shipment of peaches, was set at 5.5C instead of 0.5C. The shipping line passed the cargo claim of US$59,000 to their agent. The agent settled the claim and was reimbursed by ITIC.

ITIC frequently handles claims involving erroneous temperature settings on reefer containers.

All in the timing

A ship agent was advised by the local pilots' association that ships arriving or departing the port needed to give two hours' notice for pilot services instead of one.

Unfortunately, shortly after the change came into effect, the agent overlooked the new requirement. As a result there was no pilot available for a ship arriving at the port under their agency. The vessel missed its berth and was delayed by 2 days.

The agent received a claim of just under US$50,000, which was reimbursed by ITIC.

Resample required

As part of a pipeline project a surveyor carried out geotechnical sampling which required the collection of samples at numerous stations. Unfortunately the surveyor did not follow proper procedures in handling some of the core samples for laboratory tests.

The surveyor had to re-collect a quarter of the samples. To do this a barge, tug and crane had to be chartered from a 3rd party and an independent lab technician was employed to supervise the further sample handling.

ITIC paid the costs of the re-collection of the data, which amounted to US$100,000.

Devil in the detail

The commercial manager of a tanker arranged a voyage charter. The fixture was recorded in a recap message and was based on the BP Voy 4 form of charterparty with a large number of amendments and additional clauses.

A fully documented claim for demurrage in the amount of US$186,676 was submitted to charterers shortly after discharge. Charterers acknowledged receipt of the claim the next day.

The BP Voy. 4 standard form contains a time bar clause requiring demurrage claims to be presented to charterers, together with all supporting documentation, within ninety days of the completion of discharge.

The failure to send or pass on demurrage claims within the charterparty time bar is a frequent cause of claims against ship brokers and commercial managers operating in the tanker markets. In this case however it was clear that the provisions of that clause had been complied with.

The charterers disputed part of the claim alleging that the delays were attributable to engine problems. The parties exchanged offers but were a long way apart. While the gap between the positions narrowed the matter was not progressed with any speed.

Finally, about 18 months after the discharge, owners said that, to bring the matter to an end they would accept charterer's previous offer to settle at US$130,000.

This was communicated to the charterers who acknowledged the message saying they would check and revert. Some while later charterers responded saying that the matter was now time barred. They quoted an additional clause which was in the recap (on page 5). The clause provided that charterers shall be discharged from all liability for any claims unless proceedings have been commenced within eighteen months.

It was clear that the claim had become time barred. The managers had taken instructions in relation to the amounts of offers but had been responsible for the administration of the claim. They had overlooked the additional clause and had not diligently pursued the claim.

The manager was liable to owners who initially claimed the full demurrage of US$186,676 plus interest. The managers argued that since owners were willing to accept US$130,000 that was the amount they had lost when the claim became time barred. The claim was settled by ITIC for that amount.

Manager's maintenance matters

A ship manager was responsible for the technical management of a bulk carrier which called regularly at an Australian port to load iron ore.

The master had notified the manager of a problem with the winch used for the vessel's mooring rope. The winch was still operational, but the pinion gear was worn and needed to be replaced. The manager had taken no action to arrange the repairs.

Over the following months, the vessel called on a number of occasions at the same port. Each time, when the pilot went on board, the master explained this problem to him, and the pilot was satisfied that, given the mooring lines could be lifted by the winch, the vessel was able to berth safely.

The situation continued until one pilot decided that they would not accept the master's assurances and refused to allow the vessel to berth. The pilot spoke to the Harbour Master, who instructed the vessel to go to the anchorage until the winch could be repaired. This was done, causing a 4 day delay to the vessel. The vessel went off-hire in accordance with the terms of the charter-party.

The owners subsequently brought a claim for around US$150,000 against the manager for (a) the hire not paid to them by the charterers during the off-hire period, and (b) the additional costs incurred as a result of having to rectify this problem outside of scheduled maintenance. The owners asserted that, had the manager arranged for the repairs to be carried out once they were first made aware of the issue, this could have been done without the vessel having gone off-hire.

Investigations confirmed that this was the case, but that the charterers had incorrectly calculated the off-hire period. ITIC also reviewed the owner's claim, and determined that some of the losses claimed would have been incurred irrespective of the manager's negligence.

Ultimately, however, it was clear that the manager had breached their obligations to the owner under the ship management agreement and a settlement of the claim was negotiated by ITIC of US$120,000.

Demurrage dispute doesn't delay commission

Ship brokers arranged a voyage charter between Rotterdam and the Far East. The charterparty was subject to English law, based on the Asbatankvoy form, and provided that the brokers would receive 1.25% commission.

The ship completed discharge and freight was paid to owners in full. The brokers accordingly invoiced for their commission on the freight. The commission amounted to US$28,750. The owners also claimed demurrage from the charterers which was disputed.

The brokers invoice remained unpaid and after 3 months they chased for payment. Owners responded that they would only pay commission when the demurrage claim was resolved:

The brokers sought ITIC's assistance as they purchased ITIC's Rule 10 "additional legal expenses insurance and debt collection" cover. ITIC advised that this was a classic tactic used by owners seeking to delay or avoid paying commission. The argument did not have any legal merit.

ITIC contacted the owners pointing out that the Asbatankvoy commission clause clearly says commission is payable "on the actual amount freight, when and as freight is paid". Freight had been paid and the commission was payable.

In addition owner's attempt to withhold this commission pending resolution of a demurrage claim was against market ethics. The Baltic Exchange's Code reads:

7. Withholding payment of undisputed sums, including commission to brokers, on any earnings received is unacceptable.

ITIC threatened legal action against the owners/the ship and the owners paid the commission in full.

Standard trading conditions

ITIC has promoted the use of trading conditions by its members. Where these are not produced by industry bodies ITIC has produced suggested wordings available free of charge. These include

- **ITIC's terms and conditions for ship brokers**
- **ITIC's standard terms & conditions for surveyors & consultants**
- **ITIC's standard trading conditions for naval architects**
- **ITIC's standard trading conditions for hydrographic surveyors**

These can be found on our website https://www.itic-insure.com/resources/standard-trading-conditions-indemnity-wording together with guidelines on how to incorporate standard terms and conditions.

In addition ITIC executives have worked with BIMCO on the Shipman and Superman contracts, with BIMCO and FONASBA to produce the Agency Appointment Agreement and the Admiralty Solicitors Group to publish a marine surveyors indemnity wording.

25 years of claims

Since this is ITIC's 25th year we asked our longer serving members of staff to recall some of the more unusual situations ITIC had dealt with over the last 25 years. The following are three of our favourites.

Inebriated stevedores taken on cruise
The American agent for a cruise ship was on the receiving end of a legal suit from two stevedores. In the course of loading baggage on the ship, the stevedores had met a friend in the ship's bar and joined him for a drink or three. The men were unable to leave the ship with the pilot by way of the Jacob's ladder because of their inebriated condition and were taken on a cruise to Mexico.

The agents were amazed to receive a suit from the stevedores which held them liable, with the owners, for false imprisonment, assault, battery and mental distress.

Although the stevedores eventually withdrew their claim against the agents, ITIC paid US$150,000 in legal costs which, in the United States, are not recoverable.

A very loyal master
ITIC's lawyers arrested a tanker in Abidjan, much to the disgust and ire of the master who threatened the court bailiff with bodily harm. The owner paid and the same bailiff tried to release the ship. The master hit him on the head when he tried to get on board!

Is it counter-signed by a first class bank?
A shipowner sought to recover from his agent who had released cargo against indemnities countersigned by the failed BCCI bank. The agent had authority to accept indemnities countersigned by first class banks. The owner alleged that the ship agent had failed in his duty of care, in that BCCI was not a first class bank. It was only when ITIC pointed out to the owner that his own account had been with BCCI that the claim was withdrawn.

Arson allegation

A yacht was involved in an explosion and fire. An insurance claim was subsequently made by the owners. The insurers appointed a consultancy firm to investigate the cause of the loss.

The consultant concluded in their report that the "explosion and fire was the result of a deliberate act". The insurers however rejected the claim on other grounds without any suggestion of arson.

The owner issued proceedings against the insurers who were found to have correctly rejected the claim.

The owner then commenced legal proceedings against the insurers, the consultant and the individual surveyor who had written the report for defamation in respect of the allegations of arson made in the report. The owner's claim was rejected both at first instance and at appeal.

ITIC provides cover for liability for defamation and supported the consultant. In this case the insurers were persuaded that as there was no evidence that the consultant had been negligent they would cover the defence costs for all the defendants.

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