Claims Review

Lifeboat overboard....

A lifeboat was discovered to be missing by the crew at 07.00 one morning. It had evidently fallen overboard during the preceding night. The Master reported the lifeboat as missing and it was eventually found drifting off the port of Naze in Japan.

In view of the costs of deviating the ship to Naze to recover the lifeboat versus replacing it, it was decided, in consultation with the Hull Underwriters and P&I Club, to abandon the lifeboat. The P&I Club arranged for its disposal through their correspondents in Japan. It was, therefore, not possible for the ship manager to physically examine the release mechanism on the lifeboat.

The owners subsequently brought a claim against the ship manager for US$90,000. The owners alleged that the loss of the lifeboat had been caused by the manager's gross negligence and mismanagement. The sum claimed was withheld against fees and disbursements owed to the ship manager.

ITIC was asked to contact the owner and explain that under the ship management contract (SHIPMAN 2009) the owner had no right to set off a claim against what was owed to the manager. The owners were also advised that they had not provided any evidence to support their claim that the ship manager had been negligent let alone grossly negligent. The report on the incident concluded that it was not possible to check the release mechanism of the lifeboat although it had been inspected and serviced six months earlier at its annual inspection. The lifeboat had also been wire lashed for added security. ITIC also told the owner that if the sum owed to the manager was not paid interest would be applied and the ship would be arrested.

The threat proved sufficient and the owners remitted the funds due. Nothing further was heard about the lost lifeboat.

Option omission

Ship brokers fixed a charter party that contained an option for a second voyage. They failed to pass on the charterer's message declaring the second leg option which had to be declared upon completion of loading of the first voyage.

Owners refused to perform the second leg (the market having since risen) as the option had not been declared in time. On being informed of the broker's mistake the charterer's position was that if owners did not perform the charterers would claim US$500,000 in damages from the brokers. The charterers claimed that the sum was the additional cost of fixing a ship in the prevailing market.

The broker, with ITIC's support, negotiated with owners who agreed to perform the second leg for an additional US$275,000. This figure more accurately reflected what could have been achieved in the spot market. **ITIC reimbursed the broker for the additional freight.**

Dunnage disposal

A ship agent in Australia was asked by their principal to arrange for the disposal of dunnage and other materials related to the packing of cargo upon the ship's arrival. Australia has strict local quarantine regulations. The agent's employee engaged the services of a licensed disposal company who had previously been used to dispose of ship's garbage and other more hazardous waste. This was not the company that the agents usually used to dispose of dunnage. The agent relayed instructions to the disposal company over the telephone without verifying the total cost.

The materials were disposed of and the disposal company sent a bill for around AU$70,000. The owners questioned the unusually high charges. The disposal company said that they had charged their usual rate for licensed waste disposal. The agent made inquiries and confirmed the amount their usual dunnage disposal company would charge to deal with dunnage and packing materials would have been approximately AU$7,000.

The owner was unwilling to pay more than the reasonable costs which should have been incurred being AU$7,000. The agent had been negligent in their selection of the disposal company and was liable for the payment of the invoiced amount.

ITIC reimbursed the agent for the balance of the invoiced amount being AU$63,000.

Not strong enough

A naval architect was asked to provide plans for modifications to a section of a racing yacht which was under construction. When providing the plans, they misstated the amount of carbon fibre tissue that was required to provide greater strength in the hull by stating that 400g was required instead of 600g. While this was not held to have led to any critical weakness within the hull, the owners decided to reinforce the hull by adding the missing carbon fibre during the winter season.

The owners advised that they intended to claim for the cost of the additional work estimated at EUR100,000 – EUR150,000. The naval architect contacted ITIC and was advised that whilst their error was not in dispute, they did need to make sure that any ensuing claim only comprised of losses that stemmed from their error. Further correspondence revealed that the owners had reinforced the entire hull of the yacht, instead of solely the area where the amount of carbon fibre tissue was deficient. The full repair costs came to a total of EUR500,000.

The naval architect continued to have a good commercial relationship with the owners and an agreement was reached that EUR100,000 was attributable to the naval architect's error. ITIC reimbursed the amount paid.

Bolllards blamed

A pool manager fixed a ship on the basis that it could transit the new Panama Canal. The ships in that fleet were all of a size to be able to transit the canal and the pool manager believed that all the ships were equipped appropriately for Panama Canal transit. However it became clear that the nominated ship's bollards were not strong enough.

The Panama Canal authorities would not let the ship transit. Urgent rectification work had to be done on board. The work would have usually cost about US$70,000 if done as part of scheduled maintenance but ended up costing US$200,000.

The owners claimed the additional costs from the pool manager and ITIC reimbursed the claim.

Over load / under water

A surveyor in Canada was contracted to provide a load and stow survey for a barge of steel.

A week after the survey had been undertaken the barge sank and the cargo was lost. The surveyor was one of eight parties sued for CA$2.5 million. In the lawsuit it was alleged that the surveyor knew, or should have known, that the barge loading capacity was 6.8 metric tons but allowed 7 metric tons to be loaded. This was alleged to have caused or contributed to the sinking.

Although it was not clear that the surveyor had been negligent there was some risk that they could be found liable. The owner's insurers agreed to settle the majority of the claim and the surveyor was asked to contribute CA$75,000 to the settlement pot. Given the risk of an adverse finding against the surveyor and the prospect of a drawn out and expensive lawsuit, **ITIC agreed to indemnify the surveyor.**

Crew contract confusion

Yacht managers were instructed by the owners to terminate the employment of two crew members. Both crew members were French nationals employed by the owners. The managers gave the crew a month's notice as required by their contracts which were said to be subject to "United Kingdom law".

Subsequently lawyers representing the former crew members alleged that owners terminated the contracts without any consideration for the procedures that must be followed under French law. They commenced litigation against both the owners and the managers and arrested the yacht (which was in French waters) to obtain security for their claim.

The owners complained that while they, as the employer of the crew, had issued instructions to terminate the employment contracts the managers had not obtained any advice or guidance as to the procedural requirements under French employment law. The owners alleged this was negligent and had left them exposed to a claim under France's strict employment laws.

French lawyers advised that should the matter go to litigation, the former crew member's claims stood a good chance of succeeding as, despite the contract's provisions, French law would apply. This was because the two individuals had been in France at the time of their employment. Technically there is no "United Kingdom law" as England and Wales, Scotland and Northern Ireland have separate legal systems. The claims came to a total of EUR194,680 and included damages for loss of earnings and compensation pursuant to French mandatory employment law.

In view of the advice the owners settled the crew claims for about EUR75,000. The managers denied that they were responsible for obtaining employment advice but ultimately agreed to contribute a third of the settlement.

Soggy seeds in salvage sale

A cargo recovery agent was engaged in relation to three containers of seeds that had arrived wet. The cargo had a total value of US$145,000.

An initial survey concluded that the wet damage was condensation caused due to the container vents being blocked, thereby preventing air circulation. A further more detailed survey found that only a small proportion of the cargo had been damaged with a value of around US$12,500.

The cargo recovery agent advised the cargo insurers of the survey results and asked, on numerous occasions, for instructions to decline the claim as condensation was not a covered loss. No instructions were received from the insurance company. The surveyors obtained a salvage value, which was also forwarded to the insurance company and the consignees. Neither party responded.

The surveyors reminded the cargo recovery agent that the salvage buyers needed a response. The recovery agent agreed that the sale should go ahead and that proceeds should be paid to the consignee (who was the owner of the cargo).

The consignees asked several times who authorised the sale and noted that if they had known insurers were planning to reject the claim, they would not have agreed to the sale.

Ten months after the sale had taken place legal proceedings were issued by the consignees against the insurers, the cargo recovery agent and the cargo surveyor. The amount of the claim was US$200,000.

The cargo recovery agent had not been authorised to agree to the sale of the cargo by either the underwriters or the consignees. There was also a concern that the salvage value obtained was very low (considering most of the cargo was sound) and that only one quote had been obtained. Obviously there were mitigating factors, such as the lack of instructions from the insurance company and the consignees.

The matter was finally settled with a payment of US$75,000.

Unstable survey ship

A naval architect was appointed by the builders of an 8m hydrographic survey vessel to approve the vessel's design and stability in accordance with prescribed standards. The naval architect surveyed the vessel, conducted a stability test, and issued the necessary certificates of compliance, confirming that the vessel complied with the relevant standards.

The vessel was then put through sea trials. Unfortunately she capsized, causing significant damage. The purchasers rejected the vessel and ended discussions about the possible purchase of a number of other vessels from the same builder.

Following the capsize, the purchasers and the relevant maritime safety authority commissioned separate reports from naval architects who both advised that the vessel did not meet the required standards.

The builder brought a claim against the naval architect for around US$2m. The damages claimed were made up of direct losses allegedly suffered as a result of the incident and a large loss of profit claim in respect of the purchaser's decision not to have further vessels built.

After proceedings were issued, the parties agreed to conduct a repeat of the stability test. Unfortunately for the naval architect, the repeat test showed the vessel to be unstable and confirmed that the certificates of compliance should not have been issued.

Negotiations took place, with the claim ultimately being settled for US$250,000. The reduction had been achieved due to the fact that the builder was unable to provide evidence that the further build contracts would have been placed.

Crossed pipes

A maritime engineering consultant was engaged on a Boil-Off Gas (commonly referred to as "BOG") Compressor Project. Their involvement included the design of the oil lube pump piping in the compressors. They prepared construction drawings and the oil lube pump piping was built in accordance with those drawings.

Just before the compressors were due to be commissioned, the client discovered that there was a reduction in the oil level in one of the compressors. On investigation it was found that the design drawings contained an error. The connections for two pipes were swapped over.

The client bought a claim for US$96,432. This included the costs of draining the system, depressurising the lines, dismantling parts of the system, remedying the design errors and subsequently reassembling the system. Some testing had to be repeated and there was a delay in commissioning the compressors.

It was clear there had been an error in the design drawings. The costs claimed were reviewed by an expert and were considered to be reasonable. **The claim was promptly settled and ITIC reimbursed the consultant.**

Premature pilot

A port agent was nominated by the charterers in respect of the loading of a cargo at an Australian port.

As the scheduled arrival time approached, the Master of the ship advised the agent that he would tender a notice of readiness on "0001/14th May". Part of the agent's responsibilities included arranging a pilot. Regulations at the load port meant that the ship could only berth during daylight hours, so the agent arranged for the pilot to attend at 0730 on 14th May.

Two days prior to the ship's arrival, the Master sent an email to the agent in exactly the same format as his earlier message, but amending the date on which the notice of readiness would be tendered to 15th May. The Master did nothing to draw attention to the change.

The agent failed to notice this amendment, so did not notify the pilot of this change in arrival time. The agent did send an email to the Master, owners and charterers advising that the pilot would board at 0730 on 14th May. No response was received from anyone pointing out this was a day early.

The pilot attended the ship on 14th May as instructed but the ship was not ready to berth. The pilotage company invoiced for their services, as they were entitled to do, as the appointment had not been cancelled within the time prescribed in their terms and conditions. These costs were paid by the owners, who then sought to recover them from the agent.

The agent argued that the change in the ship's schedule should have been more clearly drawn to their attention, and that when they confirmed that the pilot had been booked, their principal should have pointed out the error.

The matter was settled with the agent agreeing to pay approximately 50% of the claim. ITIC reimbursed the agent.

Agent in the dock

Port agents in Hong Kong represented a container ship calling at Kwai Chung Container Terminal. Once discharge and loading operations were completed the ship sailed for her next port, Shanghai. During the call a service engineer had disembarked to return to his home town.

After the ship had departed it transpired that the agent had failed to apply for a certificate of free pratique prior to the ship's arrival. This resulted in a criminal summons being issued. The alleged offences were failing to ensure that (in the absence of free pratique being granted) the ship proceeded to a quarantine anchorage and failing to ensure that no persons disembarked unless permitted by a health officer.

Lawyers advised that the agent was deemed to be a responsible party under local laws. They also advised that as free pratique had not been applied for, the agent was in breach of the regulations. The penalties included imprisonment, however, lawyers advised that a fine would be the likely outcome. The agent pleaded guilty whilst submitting that the error had simply been a technical failure to make the application. It was argued that free pratique would have been granted and there had been no risk to public health. The court imposed a small fine. The legal costs were more significant. ITIC reimbursed the agent.

Manifest mistake

A liner agent was responsible for cargo booking, ship handling and the completion of documentation on behalf of their principal. On six separate occasions during a three month period the cargo manifest had been incomplete on the line's system. This led to port storage and demurrage charges being incurred at the port of discharge.

The line subsequently held the agent responsible and claimed US$28,000. The agent argued that there was "a system glitch" in the line's software system which caused the manifests to be incomplete on the line's side of the system as opposed to the agent failing to complete the manifests correctly. Unfortunately by the time the line complained the "glitch" could not be evidenced by the agent.

ITIC reviewed the line's claim and pointed out the line had included free time for port storage and demurrage. The line's claim was reduced to US$16,415. ITIC reimbursed the claim to the agent.

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