

# Claims Review

## Liable without fault

**Ship brokers negotiated the terms of a contract of affreightment (“COA”) between charterers and ship owners. The ship brokers received all of their instructions from an agent that purported to act for the charterers. The COA provided for a minimum of 18 shipments to take place over a 12 month period.**

The charterers failed to nominate any cargoes during the period of the COA.

Owners commenced proceedings against charterers. They claimed damages of US\$ 3.1m.

In their defence, the charterers denied being a party to the COA and alleged that neither the ship brokers nor the agents had authority to negotiate or enter into the COA on their behalf.

As a result, owners joined the ship brokers into the proceedings alleging that they had breached their warranty of authority. They alleged that the brokers had represented to them that they were authorised by the charterers to conclude the COA and that, if the brokers did not have such authority, then they would be liable for the loss suffered.

Liability for breach of warranty of authority does not, under English law, depend on any negligence on the part of the ship broker. It is specifically covered under ITIC's Rules.

The ship brokers' defence was that the owners knew that the brokers were acting on the agent's instructions and the ship brokers did not purport to represent the charterers. The agents claimed that they had been authorised to conclude the COA.

After filing their defence the charterers did not take an active part in the proceedings. The matter went to mediation between the remaining parties but did not settle on the day. Following the mediation, owners indicated that they would be willing to accept a substantial reduction in their claim.

**The brokers and agents were able to negotiate a split of the settlement with the agents paying the largest proportion. ITIC reimbursed the ship brokers contribution of US\$ 260,000.**

## Sail storage failure

An agent was appointed by the owners of a sailing super yacht calling at a Mediterranean island. The owners required two spinnakers to be taken off the yacht and forwarded for repairs at another port. The agent was asked to arrange temporary storage until the repairs could be organised. The agent instructed their sub-contractor, who was usually responsible for removing garbage from the quay, to take the sails away for temporary storage. Nine months later the yacht owners asked for the whereabouts of their sails. The sub-contractor had ceased business. The agent realised that they had not been invoiced for storage and unfortunately the sails could not be found.

**The owners held the agent responsible. ITIC agreed to reimburse the cost of new sails, with a reduction for betterment.**

## 10 containers go too far

A ship agent in Central America was arranging for a ship to call at two separate ports before the final destination. Shortly before loading the agent received revised instructions that 10 containers originally destined for the final discharge port should be unloaded at the second from last port. Unfortunately that message was not relayed to the correct person within the agency department and as a result the 10 containers arrived at the final discharge port.

**As a result the 10 units had to be shipped back on the next available ship. The agent was held responsible for the costs which came to US\$ 60,000, which ITIC reimbursed.**



## Ship manager out of date

A ship under management frequently traded to US ports.

On 1st July 2017 new laws came into force in California, requiring vessels entering from international waters to deballast more than 200 nautical miles from the coast. The Californian authorities had disseminated this change to the shipping community by way of circulars. Information had also been published by the vessel's P&I club, but the change was not picked up by the ship's managers. The ballast water plan was therefore not updated to reflect the new rules.

On 21st July, 2017, the vessel was sailing towards California when the

crew conducted deballasting operations beyond 50 but within 200 nautical miles. This was permitted under the previous regulations and had been done by the crew during the previous month. It was however in violation of the new statute.

The Master admitted to the Californian authorities that the crew were not aware of the legal change and the authorities issued a fine of US\$ 280,000 against the owner.

**The fine was negotiated down to US\$ 215,000. The owner claimed the amount from the managers on the basis they should have been aware of the change in law and updated the ballast water plan.**



## Commission covered

Sale and purchase brokers concluded an MOA. Shortly afterwards a mooring line was caught in the ship's propeller and the ship could not make the laycan in the MOA.

The ship was dry docked for repairs. Buyers and sellers agreed to a new laycan with compensation for the delay.

However during sea trials the ship had a gearbox breakdown and had to go back into dry dock for repairs. The ship could not be ready for the revised laycan. A third laycan was therefore agreed against a further compensation.

The ship sailed from dry dock and then experienced an oil leak in the steering gear. Class advised that it was a condition of Class and that the ship would have to be repaired.

The ship therefore would not make the third agreed laycan and buyers cancelled the agreement. The ship broker would have earned commission of US\$ 115,000 from the sale. They had purchased ITIC's loss of commission cover.

**The lost commission was therefore paid by ITIC.**

## Lost overboard

A ship agent in the Far East arranged for a boat to deliver spare parts to a ship. Unfortunately while attempting to deliver the spare parts the small launch partially capsized and the heavy parts were lost overboard.

The boat owner did not have insurance or resources to cover the cost of the spares. The ship owner blamed the agent for selecting an inadequate service provider. Although the agent was able to say that they had previously arranged bookings with the same local boat owner the services provided had been in relation to the disembarkation of small numbers of crew. It was apparent however that the agent could be criticised for selecting the same boat for the delivery of heavy spares.

**The agent agreed to contribute to the owners losses and was reimbursed by ITIC.**

## Potentially poor sleep

A naval architect was engaged to make modifications to a ship. The modifications included an additional 67 person accommodation unit.

The naval architect designed the modifications and these were implemented. During sea trials Class noted that the noise and vibration levels were at unsatisfactory levels. The cause of the issues, following an investigation by a third party surveyor, was that the naval architect had negligently failed to take into account that the new accommodation block was directly over the engine space when they had calculated the damping and insulation required.

In order to rectify the problem the original designs had to be revised and then work undertaken to put the new modifications in place. The modifications included increasing the thickness of the floors and walls, keeping the edges of the floor and the walls away from the steel structure and insulating the engine room and windows.

Following this work the ship was re-tested by Class and found to be satisfactory. The owner's claim against the naval architect consisted of the costs to rectify the issues plus the loss of income suffered due to the delay in delivery.

**After negotiation the claim was settled by ITIC for US\$ 440,000.**



## Almost auctioned

Ship brokers were owed commission by the owners of a ship which regularly called at Cape Town. The owners had ignored requests for payment from both the brokers and ITIC. A lawyer in South Africa was instructed to threaten arrest and the brokers received part payment of the outstanding amount.

The broker felt that they had been patient enough and the lawyers told the owners that they had instructions to arrest the ship unless full payment was made. At the 11th hour a message was received from the charterers advising that they would guarantee payment and would withhold payments to owners. The ship broker agreed not to arrest the ship.

Two months later the promised payment had not been received. Ultimately the ship returned to Cape Town and was arrested by the brokers, with the assistance of ITIC. Shortly afterwards two other parties also arrested the ship for unsettled accounts.

Despite the arrest the outstanding commission was not immediately received. A judgement was obtained in the favour of the ship brokers which meant that they could apply to have the ship sold. The prospect of the ship being sold in a judicial auction was finally enough to get the owners to pay their creditors.

**Some of the legal costs were recovered from the owners and the balance were settled under ITICs "additional legal expenses and debt collection" cover.**



## Fixture failure

A commercial management agreement provided that the managers could not fix the ship for more than a specific number of days without approval. The managers failed to obtain express approval for a fixture which (at its longest permitted period) could extend beyond the authority they had been given.

When the market rose towards the end of the fixture the owners claimed for difference between the fixture rate and the prevailing market. The managers protested that the owners had been aware of the fixture but there was nothing in writing before the fixture was made and they had not followed the process set out in the ship management agreement.

**A compromise was reached.**

## How much coal?

A ship agent in Australia responsible for passing instructions to the Master of a bulk carrier received from both the ship owners and the shippers regarding the quantity of coal to be loaded for carriage to China.

The instructions received by the agent were "85,000MT +/- 10%". The agent unfortunately passed the following onto the Master: "80,000MT +/- 10%". The stowage plan approved by the charterer showed a quantity to be loaded of 91,036 mt.

Based on these instructions, the ship loaded 88,000 MT, ie. 10% more than the 80,000MT figure the Master had received, but 3,036MT less than should have been loaded as per the stowage plan.

The hire was paid based on the figure of 88,000MT loaded, so the owners brought a claim for deadfreight against the charterers for US\$ 38,000, representing freight in respect of the 3,036MT coal not loaded.

It was clear that the short-loading had occurred solely as a result of the agent's error in passing the relevant information to the Master. **The agent settled this claim and ITIC reimbursed the agent.**

## Bill for a buoy

Canal transit agents represented a ship that collided with a buoy. The canal authority sent an invoice to the agent for the damage of US\$ 225,000. The owners disputed the amount of the invoice and told the agent to negotiate with the authority.

The agent felt that the invoice was too high but that their principal's figure was unrealistically low.

Canal transit agents are required to lodge a bond with the canal authority to cover their principal's liabilities. When the negotiations became protracted the authority drew down upon the agent's bond for the whole amount. The owners declined to reimburse the agent repeating their instruction to negotiate a reduction in the claim.

ITIC contacted the owners to advise that they should indemnify their agent irrespective of their view of the amount of the canal authority's claim. The owners did not respond positively or even fund what they considered to be the true value of the claim. **ITIC had been tracking the ship and arranged for it to be arrested in the Far East. This resolved the issue.**

## Fraud Watch

**A ship agent received a request from a ship owner to deliver cash to Master of US\$ 45,000 during a forthcoming call. Funds were remitted and received by the ship agent.**

A few days later the ship agent received a call from a supply company and then from the Master. They were told that instead of delivering the full amount to the Master, they should first deduct part of the amount as payment for fresh provisions. These would be delivered to the ship during her stay at the port.

The ship agent agreed, as it was not an unusual request, and they received written confirmation from the Master, copying-in the ship owners.

A few days later the Master confirmed the actual amount to be delivered on board as US\$ 23,000 and the remaining funds should be remitted to the supply company as settlement for provisions. This email contained a preliminary delivery note signed by a ship supply company.

Later that week the ship agent received a message from the Master stating that he expected the provisions to be delivered at 18:00 hrs the same day and the message

went on to explain the denomination of the funds required. This email had the ship supply company in copy and was sent as a reply to previous messages regarding the provisions and cash to Master. However, it transpired that the email was not sent from the Master, whose email address was 123@abc-fleet.com, but from 123@acb-fleet.com. This was not noticed by either the agent or the ship supply company.

The ship agent received an invoice with banking details with the ship's stamp and Master's signature, together with the stamp and signature from the ship supply company. The email attaching the documentation appeared to have the ship supply company in copy, but in fact the email had been changed from supply@marineservices.eu to supply@marineservices-eu.com, which was also not noticed. The monies had been remitted to a party who had intercepted the communication chain and fraudulently obtained the funds.

**ITIC reminds all members when transferring funds to use the telephone to check the account details with a trusted representative at the recipient's office.**

**One of the most common claims against ship brokers and commercial managers arises from the failure to pass on demurrage and other claims documentation in time. By the time the mistake is discovered the claim has become time barred under the terms of the relevant charterparty. The following two cases are examples of what can go wrong:**

## Armed guards missing

The operations department of a London broker received a message from an owner in relation to a voyage with offshore discharge in an area with a high risk of piracy. Attached to the message was a freight invoice and another one for the cost of armed guards. This cost was payable by the charterer under the terms of the charterparty.

The operations department realised that the freight invoice had been incorrectly addressed and requested a revised one. In the meantime they did not pass on the owner's message.

In time they received a revised invoice from the owner which they passed on, failing to notice that the new message did not have the invoice for armed guards attached to it.

Sometime later the owner's accounts department enquired about the unpaid armed guards invoice which was for US\$ 80,000. The operations department realised their error. They sent the invoice to the charterers who rejected the claim because it had not been submitted within the period permitted under the charterparty.

**The owner claimed against the broker who had to settle the invoice and were reimbursed by ITIC.**

## A detrimental deletion

A member of a ship broker's post fixture department was aware that a number of charterers had placed a block on emails with attachments above a certain size. A large number of emails have attachments which contain logos and similar symbols. She had developed the practice of deleting these attachments from messages before forwarding them on to the charterers.

Unfortunately when forwarding a demurrage claim she inadvertently deleted part of the supporting documentation for one of the discharge ports. The charterers subsequently refused to pay the part of the demurrage claim relating to that discharge on the basis they had not received a properly documented claim within the time specified in the charterparty. **The claim of US\$ 30,000 was paid by ITIC.**

See more online at [itic-insure.com](http://itic-insure.com)

Call our team on +44 (0)20 7338 0150

 or follow us at: @ITICLondon

Bermuda | Hong Kong | The Isle of Man | London | Newcastle | New Jersey | Piraeus | San Francisco | Shanghai | Singapore | Sydney

ITIC  
IS MANAGED  
BY **THOMAS  
MILLER**

For further information on any of the products, services or cover provided by ITIC contact Charlotte Kirk at:  
International Transport Intermediaries Club Ltd, 90 Fenchurch Street, London EC3M 4ST.  
tel + 44 (0)20 7338 0150 e-mail [ITIC@thomasmiller.com](mailto:ITIC@thomasmiller.com) web [www.itic-insure.com](http://www.itic-insure.com)  
© 2018 International Transport Intermediaries Club Ltd