ITIC SPECIALIST PROFESSIONAL INDEMNITY INSURANCE

Commercial management

Claims Review

Bags of trouble

A commercial ship manager fixed a ship for a voyage of 4,000 metric tonnes of ammonium nitrate in big bags. This type of cargo had been carried by the commercial manager's fleet on several occasions, but the cargo had always previously been described as being in loose/bulk condition. After the ship had loaded about 950 metric tonnes, port state control came aboard and stopped any further loading, as it was established the ship did not have permission to load ammonium nitrate in big bags but only in loose condition.

After checking the position with owners, the classification society and the flag state, it was confirmed that the ship which had been fixed was not suitable to load the ammonium nitrate in big bags.

To keep any costs to a minimum, the commercial manager fixed a different ship in their managed fleet for the same cargo, with the agreement of the charterers. The charterers then held the owners responsible for the additional costs, who in turn, held the commercial manager liable. Fortunately, these costs only amounted to €22,000, which was reimbursed to the commercial manager by ITIC. The cost of this claim could have been significantly higher, if a suitable substitute vessel had not been available.

Commercial managers need to be fully aware of all limitations which ships under their management have, as regards to carriage of particular cargoes and, furthermore, must pay careful attention to the detailed description of any cargo which they agree to commit their owners to in any charterparty fixture.

The claims examples reproduced here have all featured in issues of The Claims Review and are all case studies which have either been paid by ITIC or where assistance has been provided. These examples should be invaluable in helping you to identify potential claims exposure within your business. ITIC recommends that you review your procedures continuously in order that you avoid these types of situations occurring to you and your business.

ITIC IS MANAGED BY **THOMAS MILLER**

Assumptions = Claims

A commercial manager arranged for a ship to load cargo at a port which the ship had not previously called and of which neither the commercial manager or the ship owner had any previous experience. The commercial manager estimated, without checking with the agents, that the disbursements at the port would cost in the region of US$10,000 and used this sum in the voyage calculation.

On arrival it transpired that the port was small and that tugs were required to assist the ship to and from the berth. Furthermore the port was close to a holiday resort and as such there were additional fire and pollution protection services which were compulsory.

The final disbursement account totalled US$65,000. The owner was expecting to earn on the basis of the original calculation and claimed the US$55,000 balance from the commercial manager, which was reimbursed by ITIC.

Prohibited transits

A commercial manager took over a newly built container ship from a Chinese shipyard and arranged a first charter to a Korean company. The charter called for the ship to proceed to load her first cargo at Keelung, Taiwan and the commercial manager ordered the master to proceed to that port. The ship was arrested on arrival at Keelung because Taiwanese law prohibited ships from sailing to Taiwan directly from China whether loaded or in ballast. The owners were fined US$98,000, which they recovered from the commercial manager.

In another case, a pool manager made a similar mistake when he fixed a voyage charter which called for a VLCC to discharge at the Louisiana Offshore Oil Port (LOOP). The head charterparty contained an exclusion of trading to the United States. Unfortunately, the tanker was already loaded and underway before it was realised she could not enter US waters. Another VLCC had to be chartered and a ship-to-ship transfer took place outside US waters. The cost of the transhipment, charter hire, insurance, etc. was US$270,000, which the owner claimed from the pool manager.

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.

Bunker bungle

A commercial manager had, for several months, been operating a ship on a regular route which involved a call at Singapore, where she was usually bunkered. The commercial manager was advised by the ship owners that the ship had been sold for scrap and that, on her next call at Singapore, instead of taking on full bunkers she only needed to lift sufficient bunkers to reach her scrapping location.

Unfortunately, the commercial manager's operations team failed to take note of the owner's instructions and bunkered the ship with the usual amount. When the ship was scrapped, the additional bunkers were an unexpected gift to the scrap yard. The owners brought a claim on the commercial manager for US$95,000 which was the difference in value of bunkers purchased. ITIC reimbursed the commercial manager, less their deductible.

E-mail error

A commercial manager of a fleet of tankers was very aware of the perils of failing to make sure that demurrage claims were presented in time. They had a detailed diary and spreadsheet system in their office recording the relevant time bars. Despite all their precautions a demurrage claim of almost US$300,000, sent to charterers by email did not arrive.

Unfortunately, the commercial managers had used an incorrect email address. Part of their system included a database of all the email addresses which they used regularly, however on this occasion the email address was not on the system and was typed in manually, with an "l" being substituted for an "i". Chasers were sent to the charterers, but still using the incorrect email address.

On a routine review of outstanding demurrage claims the mistake was realised, this was unfortunately only after expiry of the time bar of 90 days in the governing charterparty.

There was no defence to a claim for the correct amount of the demurrage which was paid by ITIC.

The dangers of forgetting

A ship fixed by a commercial manager had a clause in the charterparty which stated that the charterer would reimburse owners any extra costs in relation to the ship being ordered into a war risk area.

It was further agreed that the commercial manager would advise the charterer what the additional costs would be, prior to the ship entering the war risk area, so that the charterer could reclaim the cost from the cargo owner.

On three occasions the commercial manager forgot to advise the charterer of the additional cost and just debited them 3 months later. It was then too late to recover the costs from cargo owners and so the charterer refused to pay, based on the commercial manager's negligence.

Some negotiations took place to reach an amicable settlement of US$60,000, which was paid by the commercial manager and reimbursed by ITIC.

Commercial manager caught by "scatter gun"

The sinking of a cargo ship with tragic loss of life resulted in large claims by the bereaved families. As the port of loading had been in the USA, an American lawyer, employing the usual "scatter gun" approach, issued summonses against everyone who had even a remote connection with the ill-fated ship. One of the targets of the lawyers' "scatter gun" was the commercial manager, whose only connection with the ship was to fix her employment. The claim was vigorously resisted because the commercial manager was not, and could not be, in any way responsible for the sinking. One by one all the other defendants settled with the bereaved families, and the commercial manager was left with the unenviable prospect of being the sole defendant at a jury trial in the US courts. Fearing that the jury would allow their natural sympathy for the families to cloud their judgement and overrule the evidence, ITIC's lawyer recommended a "cost of defence" settlement. An amount of US$370,000 was therefore paid in claim settlement and costs for a loss for which the commercial manager had absolutely no liability.

Too tall to ship

A German commercial manager fixed eight specially designed "blade containers" from Spain to a port in southern Italy. Four of these containers were to be stowed under deck and four on deck in two tiers. During loading operations, the Spanish authorities refused to allow the vessel to sail with the four containers on deck due to insufficient visibility from the bridge. The permitted height of deck cargo was 5.15 metres and the containers as stowed were 5.7 metres high. As a result, two containers had to be unloaded and could not be transported.

This resulted in a loss of freight of US$25,000. This amount was claimed by the owner from the commercial manager, who had prior knowledge of the loading capacity of the vessel and, should, therefore, have known that booking the containers with these dimensions would put the stack above the permitted line of sight from the bridge.

An unacceptable tanker

A commercial manager misdescribed a tanker as being acceptable to a specific oil major, even though he had received an email from the head owners prior to fixing that stated she had been rejected by them. This email was overlooked by the manager.

The fixture recap contained a clause stating **"TO THE BEST OF OWNER'S KNOWLEDGE AT THE TIME OF FIXING, VESSEL IS NOT UNACCEPTABLE TO FOLLOWING OIL MAJORS:"** The list referred to a number of companies but did not include the specific oil major. The pool manager had mentioned during negotiations that in their view the tanker should be acceptable to that specific oil major since it was not excluded.

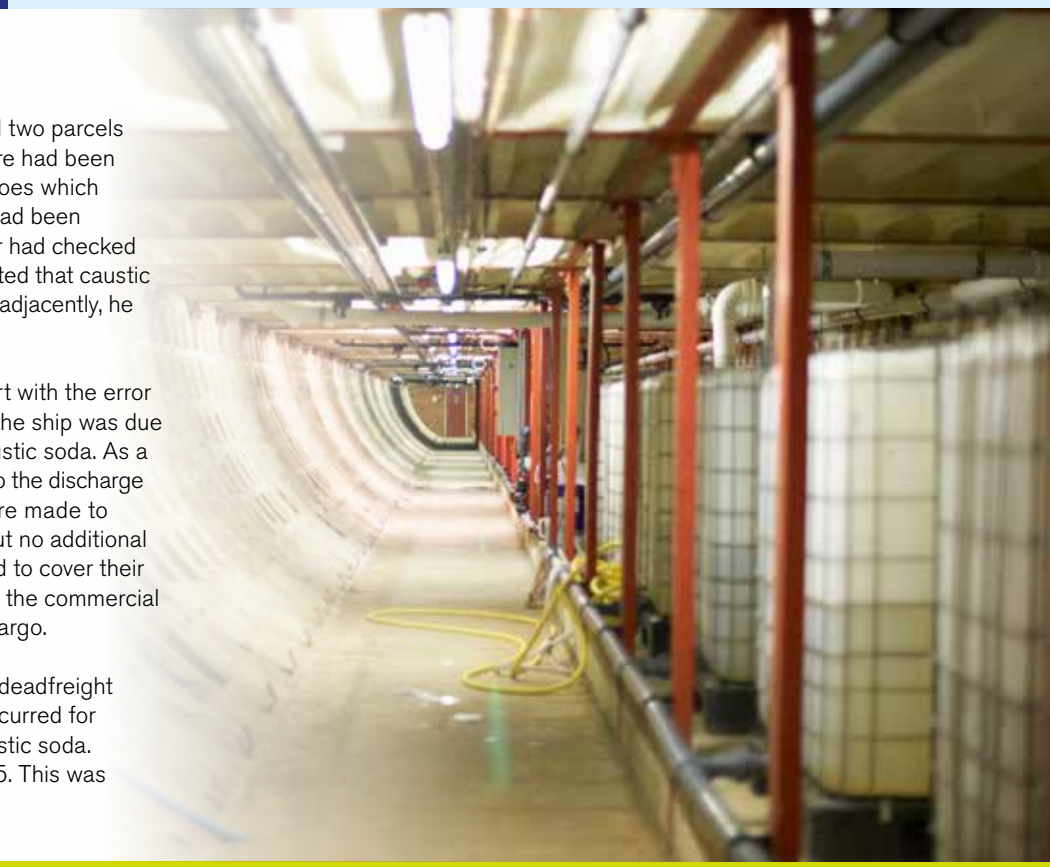
The charterers could not sell the cargo and had no other option than to put it into storage. They claimed US$250,000 in damages. Their claim was settled by the manager, who was reimbursed by ITIC.

Incompatible cargoes

A commercial manager fixed a ship to load two parcels of chemicals. Unfortunately, after the fixture had been confirmed, it was discovered that two cargoes which could not be stowed next to one another had been booked. Although the commercial manager had checked in the relevant guidelines, which clearly stated that caustic soda and acrylonitrile could not be stowed adjacently, he inadvertently confirmed the opposite.

The acrylonitrile was loaded at the first port with the error only being discovered a few hours before the ship was due to arrive at the second port to load the caustic soda. As a result of the error, the ship had to proceed to the discharge port without the caustic soda. Efforts were made to book another cargo to mitigate the loss, but no additional cargo could be found. The owners also had to cover their commitment to move the caustic soda and the commercial manager had to fix a further ship for this cargo.

The claim from the owners comprised the deadfreight claim on the first ship and the expenses incurred for having to fix a second ship to load the caustic soda. The total of these losses was US$212,585. This was paid by ITIC.



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 fax + 44 (0)20 7338 0151 e-mail ITIC@thomasmiller.com web www.itic-insure.com