September 2002

intermediary

WHOSE AGENT AM I?

Misdirected Arrows

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ISM CODE – EPISODE 2

Best endeavours

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THE PROFESSIONAL INSURER

features

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welcome

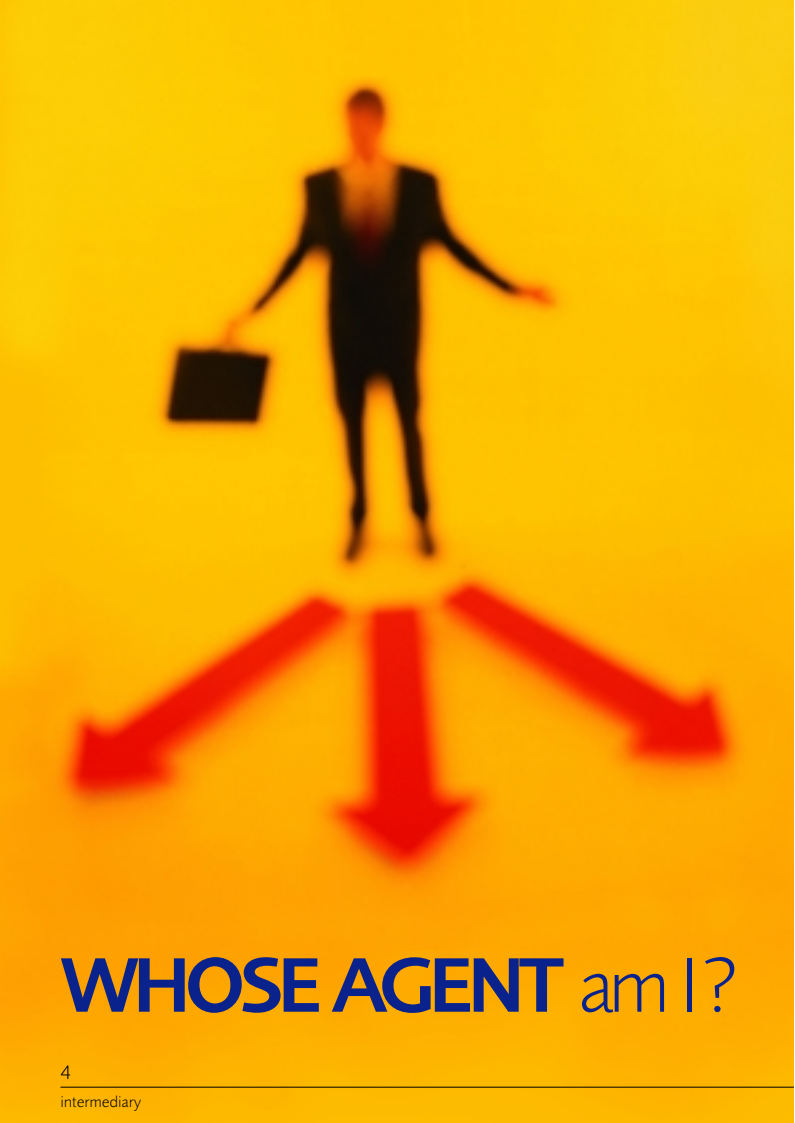
The role of the intermediary is often blurred, especially in these times of increased commercial pressures, and "whose agent am I?" is a question often asked by ITIC's Members. Furthermore, the intermediary is being regularly sued by parties who should be directing their attentions towards the principal, rather than the agent. Both these issues are addressed in this edition of the "Intermediary".

The ISM Code, now four years old, is part of everyday life for many ship owners and ship managers, and with the implementation of phase two almost every remaining commercial ship is now subject to its regulations. Further information on this subject can be found in this edition.

Loss prevention information is of great importance and this issue of the "Intermediary" contains a number of articles providing advice on matters ranging from mediation to money laundering.

To finish on a lighter note, we hope to receive numerous entries for the crossword competition on the back page, particularly where there is a bottle of champagne to be won.

We would welcome any comments that you may have on this issue, or any other matters relating to the Club, and hope that you enjoy this year's "Intermediary".



WHOSE AGENT am I?

Ship brokers and ship agents can be placed in a position where it is not clear who they are acting for. The classic position where each party has its own ship broker, or where there is an agency agreement, makes the agent/principal relationship easy to identify. But what happens when there is one agent and two principals, or two agents and one principal (or no agency agreement)? Agents, whether ship brokers or port agents, are sometimes in a position where identifying their true principal is not an easy task.

The intermediate broker

Ship broking is unusual in that it is normal practice for the owner to pay commissions to all the brokers involved in the charter of a ship, including the charterer's broker. However, the charterer's broker remains just that, even though his commission is paid by the owner. In sale and purchase deals, the seller pays the brokerage to both his own broker and the buyer's broker. The old adage "he who pays the piper calls the tune" does not, therefore, apply to ship broking. The reality is often that there are three or more brokers in a chain. Whose agents are the intermediate brokers? There is no easy answer to this. Considering that it is such a common situation, it has not been the subject of much judicial consideration.

A ship broker acting for an owner (broker A) may approach another broker (broker B), who in turn approaches the broker for a charterer. Broker B can be an independent intermediary who does not have a contractual relationship with either the owner or the charterer. His role is to act as a conduit for the negotiations, but he is not representing the interests of one principal over and above the interests of the other. An intermediate broker is not, however, without duties or potential liabilities.

The charterer nominates and the owner pays.

Some voyage charters contain clauses which give the charterer the right to nominate the port agent, who is then employed by the owner. In such a case, the charterer may receive a fee or commission from the agent for this act of patronage. Some charterers are known to make a substantial amount of money from the 'commission' that they receive from the agent, and are therefore quite keen on this arrangement. Why do charterers feel they have the right to not only nominate the owner's agent, but also to take a commission from him? It is understood that the practice of charterers nominating port agents has its roots in the 1960s when major oil companies changed from their previous practice of exclusively using their own tonnage to carry their own cargoes and started to spot charter tonnage. The oil companies still wanted their own port agents, who were familiar with their business, to continue to act even when the ships were chartered. The reasons were obvious – the oil company's normal port agent would be in a position to ensure smooth loading and discharge operations. Major oil companies have to a large extent moved out of ship owning, but the practice of nominating the owner's port agent has continued, and over the years has spilled over into the dry trades.

This practice, and particularly the payment of a commission to the charterer by the port agent, is not popular with owners. It has been alleged by some owners that it is similar to an agent making a secret profit (for example by taking a secret commission from a ship's chandler for placing the owner's business with him). However, careful consideration reveals that the two situations are completely different. First of all, the arrangement is not secret. The owner is well aware of the fact that when a charterer nominates the port agent he will do so in exchange for a commission. Secondly the agent does not gain from the arrangement; indeed it can result in his paying over 50% of his agency fee to the charterer. This type of arrangement is merely the workings of the free market as, when negotiating the charterparty, the owner is not compelled to accept a clause which allows the charterer to nominate his port agent. In cases where the charterer has the right to nominate, the owner may manage to include a "competitive agency" clause in the charterparty that provides that the agent's fees are to be competitive with those otherwise available at the port. This can result in a situation where the owner then attempts to use the "competitive agency" provision to protect himself from having to pay agency fees which are inflated by the charterer's commission. Faced with an owner who wants a 40% reduction in agency fee, and a charterer who wants a 40% commission, the agent may well be unwilling to do the business at such levels.

Under these circumstances, where do the agent's loyalties lie? **It is important that ship agents do not confuse a nomination with an appointment. In simple terms, if a charterer nominates an agent, and the owner pays, it is the owner who is the agent's principal**. The owner is paying the agency fee and legally the agent's duty and loyalty should be to the owner. However, where the agent depends on the charterer for his livelihood, some interesting conflicts of interest occur. What if the charterer instructs the agent to release cargo against a letter of indemnity, but the owner refuses to authorise the delivery? The agent could find himself with a charterer who is threatening to take

his business elsewhere if he does not comply with a practice which obviously prejudices the owner's position. In such circumstances the agent's duty is to the owner.

Dual agency

An agent can act for more than one principal with the consent of both. In shipping the owner and the charterer are not two opposing parties, but partners in a venture the aim of which is to make money for both of them. However, if a dispute between these two partners arises, the dual agent will be in a very difficult position. The courts will not be sympathetic to an agent who has allowed himself to be put into a position where he has a clear conflict of interest, particularly when the conflict has not been previously disclosed to the two principals concerned.

Sole ship broker

The position of a sole broker can be difficult to analyse. If one party has clearly made the first approach to a broker and requests that the broker goes out on the market to find a ship or cargo as the case may be, then the broker will almost certainly be that party's agent. If, however, the reason the party made contact with the broker was that the broker frequently acted for a certain owner, then that contact obviously would not mean the broker's allegiance had changed. In addition it would not normally mean that the broker had authority to act for the owners in that particular matter unless subsequently authorised to do so. The idea of looking to see who made the first approach can be a useful test of a broker's allegiance but it is certainly not a conclusive indicator. It is very much a question of looking to see what happened and drawing the appropriate conclusions. The situation is further complicated by the fact that the broker may start as the agent solely for one party but, with consent, can subsequently act for both parties. In a dispute between owners and charterers the sole broker will be placed in a very difficult and embarrassing position as, unless the dual agency has been fully disclosed, both principals can be under the impression that the broker is solely representing them. This is compounded in the not uncommon situation where a different individual within a broking concern will deal with each principal who regard as "their" client. In legal terms, however, the broking company being a legal entity (such as a limited company) will be deemed to be the agent and not its individual brokers. It is clear that the proper solution, however commercially unwelcome, is for the broker to keep strict checks to identify conflict situations and, if one arises, disclose the position to both principals. If both principals are content for the dual agency to continue, then they can have no subsequent complaint.

Even when the sole ship broker has the consent of both parties to act, he can still face conflicts in fulfilling his duties. What if a regular charterer principal asks him to fix a particular ship, when the owner of that ship is also a regular client? What if the broker knows that the charterer has a history of late payment? The sole ship broker in this situation has a clear duty to the charterer of confidentiality and an equally clear duty to the owner to inform him of material facts (eg. that the charterer may not pay him on time).

Charterers' agents and owners' protective agents

Under time charter parties, the charterer appoints the port agent and it is open to the owner to also appoint his own protective agent to represent his interests. However, it appears that few owners choose to incur this expense and the selected agent is therefore considered as being the ship's agent in a general sense, and is therefore also the owner's agent. These two separate duties can give rise to a conflict of interest. What if the charterer has failed to pay for tugs and pilots within a reasonable time, thereby putting the owner at risk of having his ship arrested? Would the agent release this information in order to fulfil his duty to disclose material information to the owner?

An agent in the USA for a shipping line operating a service to South America using charterered tonnage was found at arbitration in New York to have failed in his duty to the owner (for whom he had accepted a protective agency) by paying freights to the charterer. The charterer, subsequent to receiving the freights, went into bankruptcy, leaving the charter hire for the ship unpaid.

We have tried in this article to give an overview of a very complicated subject. Sometimes the task of identifying an agent's true principal is so difficult that only a court can make the final determination. We have not touched on the area of the legal position of sub-brokers and sub-agents, which will be dealt with in a future edition of the "Intermediary".

TRADE PROHIBITIONS WITH U.S. EMBARGOED COUNTRIES

There have recently been a number of situations reported to the Club where the Member has encountered difficulties due to trade embargoes. The last "Claims Review" reported a claim where a commercial manager instructed a newly built containership to sail from China to Taiwan. The ship was arrested because Taiwanese law prohibits ships sailing directly from China to Taiwan. More recently the use of the word "Cuba" in a bank transaction from an European company to an Australian company, through a New York bank account, caused the monies to be seized. The purpose of this article is to alert Members to the dangers that exist.

The Congress of the United States, through the Department of Treasury, Office of Foreign Assets Control (hereinafter "OFAC"), prohibits U.S. citizens and corporations (hereinafter "entities") from transferring goods and funds, for virtually any reason, to the following countries:

Afghanistan
Burma/Myanmar
Iran
Libya
North Korea
Serbia
Angola
Cuba
Iraq
Montenegro
Pakistan
Sudan

While there are exceptions to the embargoes which are specific to certain countries, these are often restricted to humanitarian aid, medical supplies, and the like.

Penalties for violating the embargoes may include confiscation of the goods or "freezing" of the assets in their entirety. U.S. banks (whether located in the U.S. or elsewhere) receiving funds from any source, intended for transfer to embargoed countries, are prohibited from returning such funds to the remitter.

On the face of it, the prohibition and methods of compliance thereto seem straightforward. However, the prohibition is far-reaching, and can be unwittingly violated by even well meaning and prudent entities. While it is clear the U.S. entities may not directly transfer funds and goods to the embargoed countries, the OFAC enforces the prohibition in the following less obvious ways:

1. Branches of U.S. banks located outside the U.S. are prohibited from releasing funds to embargoed countries, even if those funds were received by the U.S. bank branch from non-U.S. nationals.

Example: *A French corporation in Paris transferring funds to Angola (an embargoed country) through a branch of Citibank located in Paris, is subject to forfeiture of the funds because Citibank is a U.S. corporation.*

2. Funds may not be transferred to an embargoed country through the foreign office of a U.S. ship broker.

3. A U.S. entity may not transfer funds to its own branch offices located in embargoed countries.

Example: *Acme Ship Agency (a U.S. corporation), with independent offices worldwide, may not transfer funds from any of their offices to their branch office in Pakistan (an embargoed country).*

4. U.S. entities may not transfer funds to nationals of embargoed countries, even if those nationals reside in a non-embargoed country.

Example: *A U.S. citizen, whether or not residing in the U.S., may not send a birthday gift to a Libyan citizen residing in London, because Libya is an embargoed country.*

5. The U.S. offices of non-U.S. entities are prohibited from transferring funds or goods to embargoed countries.

Example: *A German brewer whose bottler in California ships beer to North Korea (an embargoed country) is subject to forfeiture of the beer.*

OFAC has identified over 5,000 organisations that are considered to be so closely related to embargoed countries that transferring funds and goods to these organisations is considered tantamount to trading with the embargoed countries themselves. These "Specially Designated Nationals" are compiled in a list that may be obtained from the OFAC Compliance Division by telephoning (202) 622-2490 or writing to:

OFAC
U.S. Department of Treasury
1500 Pennsylvania Ave. N.W.
Washington, D.C. 20220
U.S.A.

ITIC Members, whether or not incorporated in the U.S. who operate branch offices in U.S. embargoed countries, should be particularly mindful of the nuances of these prohibitions.

Our thanks go to David Grammas for providing the above information.

The **Insurance Market**
subsequent to September 11th

The terrorist attack on the World Trade Centre (WTC) in September last year changed perception across most aspects of human life. As the full scale of the human horror and economic cost begins to unfold, the implications for the insurance industry are becoming clearer.

First, the hard facts; nearly 3,000 people died in the WTC attack. The insured cost of the loss is variously estimated between US$ 50,000m and US$ 70,000m. The previous most deadly terrorist attack was the bombing of the U.S. Marine Barracks and French Paratrooper Base in Beirut in October 1983 in which 300 people died. The final insurance cost will be between two and three times the size of the previous largest ever insured loss (hurricane Andrew in August 1992 cost approximately US$ 20,000m in today's prices).

Following last September, industry figures have been quick to point out the exposed position of insurers to this type of loss, and in some cases, accept the blame for their own company's losses. Warren Buffett of Berkshire Hathaway wrote to his shareholders in November 2001 claiming that there were three basic rules in running an insurance company: "Only accept risks you are able to properly evaluate... limit the business accepted in a manner that guarantees you will suffer no aggregation of losses from a single event or from related events that will threaten your solvency... avoid business involving moral risk: no matter what the rate, you can't write good contracts with bad people". Buffett went on to say that all of these rules were broken in his own company, General Re, during the last three years. Failure to observe the first and second of his basic rules resulted in enormous losses to the company.

In a different context, the Swiss Re listed the criteria for insurability of risks as assessability, randomness, mutuality, and economic feasibility. In their report "Natural catastrophies and man made disasters in 2001", they commented "Terrorism risk does not readily satisfy all of these criteria. The data available from past events gives little indication of the future risk. Although terrorists do not act randomly, but strike by surprise and deliberately maximise effects, their attacks are fortuitous for their victims. Mutuality is difficult to achieve, given the major differences in terrorist hazard exposure between landmark risks and most other buildings. The tremendous loss potentials and the risk of co-ordinated terrorist actions throughout the world hampered diversification. And, finally, the evident uncertainties regarding risk qualification make the economic feasibility of the business extremely doubtful".

The comments from two world leaders in the insurance market were a prelude to a number of changes in the market, two of which we shall expand upon: the definition and availability of terrorist cover, and the impact of the WTC attack on insurance pricing.

Terrorist Cover

The majority of fire insurance policies used historically to cover fire and explosion damage from any cause with certain exceptions such as war, civil war or civil commotions. As terrorism was not mentioned in most war exclusion clauses, loss or damage resulting from a terrorist act was covered. In some countries where the threat of terrorist risk was perceived to be particularly high, such as the UK, Pools regulated by the government were established to regulate the risk. However, the issue of terrorism cover was not clear, even in policies where terrorism itself was specifically excluded.

Any number of definitions of terrorism abounded. Some tried to define it in terms of the motivation of the people perpetrating the act while other definitions concentrated on the type of weapon used. Both routes are fraught with difficulty: how can you really ascertain the motives of a bomber (especially a suicide bomber)? The clauses defining weapons of war never envisaged the use of civilian airliners as flying bombs. The confusion after the WTC loss resulted in an attempt by many insurers to limit their cover either by quantum or by the addition of further exclusions. As the months have passed by, a greater degree of clarity has emerged and some common features can be seen across the entire insurance industry. These may be summarised as follows.

1) Greater clarity in terms of war and terrorism exclusion clauses.
2) Reduced capacity available in both the war and terrorist markets.
3) Greater attention being paid by insurers to risk and capital management in order not to over expose their balance sheet to this type of loss.
4) The emergence in the private insurance sector of specialists offering cover in niche areas.

Impact on pricing

An insured loss of the scale of the WTC disaster affects every atom of the world insurance industry. The scale and diverse nature of the loss across so many different classes of insurance ensures this. So in the short term, increased prices and tighter capacity are inevitable. However, the September loss served as a dramatic accelerator of a trend which was already underway. World non life insurance markets were in the doldrums in the late 90's with only a few of the major players making money. The well publicised losses in the London market in 1999 and 2000 were typical of the majority of insurers' experience.

It may not be very profound to predict rate increases after the WTC bombing and all the less so a year after the event. For buyers of insurance and investors in the stock of insurance companies, a view as to the length of this rating up-swing would be more interesting.

If we go back to Warren Buffett last November, he predicted that the hard market would be relatively brief as capital would flood into the market to take advantage of the newly attractive terms. It is certainly true that world-wide capacity for catastrophe risks has dramatically increased since 1 January. Investors in Bermuda have been leading the charge, as literally dozens of new companies have either been incorporated or substantially increased the amount of capital available to them. The London market may have consolidated in terms of its number of players, but overall capacity in Lloyd's in 2002 will be at least 20% higher than the previous year. If the normal rules of supply and demand apply, one would expect this surplus to result in price increases gently easing over the next 18 months. This may not apply to certain specialist areas such as the insurance of terrorism itself, retrocessional reinsurance, or tough liability business (to give a few examples), but it will certainly be the case for the majority of business.

The scale of the WTC loss awoke many insurers from a world where inadequate pricing and lack of clarity were already leading them down a loss making path. A catastrophic loss of this size was bound to bring a commensurate reaction but it looks as if it may be short lived.

We are grateful to Xavier Villers of Miller Marine (the Club's reinsurance brokers) for the above global review of the World insurance market subsequent to September 11th. Members of ITIC were fortunate to be shielded from the effects of September 11th, as the Club's re-insurance contract was negotiated in the previous April and fixed for two years. Elsewhere in the insurance market it has been common for those renewing their professional indemnity cover to see premium increases of 30%. The forecast is for prices to continue to increase.

Snakes and **ladders**

After forty years in the industry, Gordon McMillan, managing director of Dublin-based Leinster Shipping (Agencies) Ltd., and chairman of the Institute of Chartered Ship brokers talks about his love affair with shipping

GORDON McMillan made his first forays into the shipping industry at the tender age of seventeen. Starting out as an apprentice and subsequently becoming a navigating officer with the BP Tanker Company, it was his seafaring days that sparked what was to become a lifelong love affair with the shipping industry. Today, Gordon is not only chairman and managing director of his own Dublin-based firm, Leinster Shipping (Agencies) Ltd., he is also chairman of Controlling Council at the Institute of Chartered Ship brokers and a board member of Multiport, the world's largest network of independent ship agents.

Starting his career at sea, it wasn't long before he was enticed ashore, accepting a management position with Mayfair-based London and Overseas Freighters. A few years later, however, family commitments took him back to his native Ireland where, for the next six years, he worked in ship management, enjoying extensive periods of travel worldwide.

But shipbroking was his real love. "As a broker I most enjoy becoming the contractual catalyst that effectively sets in motion a chain of events which help generate gainful employment to multiple individuals worldwide," says Gordon. Enabling him to indulge his interest in the broking field, in 1976 Gordon set up Leinster Shipping (Agencies) Ltd. Today Leinster is a diverse collection of companies covering not only ship broking but also ship agency and freight forwarding. And it's not only the usual strategic, policy and administration decisions that Gordon handles. "I also like to get involved in day-to-day problem solving and opportunity evaluation to help keep my wits sharp," he says.

After forty years in the business, Gordon knows only too well how cyclical the shipping industry is. He has also witnessed first-hand some of the most dramatic and far-reaching developments affecting the industry as a whole. "The most significant development, undoubtedly, is the rampant growth of containerisation, stimulated by new technology and globalisation, which has revolutionised the liner trades," he says. "Sadly, however, this market has failed to evolve in a sustainable manner and the consolidation process deemed necessary to rationalise costs has seriously depleted the number of carriers." This is a trend brokers and agents the world over will be only too familiar with.

In this ever-competitive environment, professionalism should be more important than ever. As Gordon points out, however, that's not always the case. "It saddens me at times to witness the erosion of professional standards of integrity and trust," he explains. "A rush age cannot be a reflective age. Too often hasty judgements are made without considered thought. Rash decisions usually have to be paid for later."

One way in which Gordon is working to preserve and promote professional standards is through his role at the Institute of Chartered Ship brokers (ICS). As chairman of Controlling Council, he is charged with directing implementation of the Institute's vision and goals to meet the needs of its members. "The Institute sustains the passion for excellence," says Gordon. "It sets the industry standard for shoreside shipping and transport education and the qualification earned is both universally acknowledged and respected as a reliable measure of professional competence."

But, in this rush age, do qualifications really count? While there is no doubt that qualifications remain essential for anyone who works at sea, things ashore tell a very different story. Just a few months ago, Gordon's colleague James Freeland, president of the ICS, warned ship brokers that unless they could show evidence of attaining recognised professional qualifications, they may find themselves under the scrutiny of regulatory bodies such as the UK's Financial Services Authority. According to Gordon, the days of the gifted amateur are over.

"Increasingly, perceptive employers are insisting upon professionally qualified staff, mindful of the mounting pressure of regulatory control regimes and the added liability that they represent," says Gordon. It is this mounting regulatory pressure that he believes will be the greatest challenge facing the shipping industry over the next twelve months, particularly in the areas of safety, pollution prevention, security issues and corporate accounting standards.

He has a few words of advice for shipowners too. "Shipowners unfortunately retain an historical propensity towards bad timing when it comes to investment in new building programmes. If only it were possible to break out from the perpetuating cycle of over-tonnaging and bring longer-term stability to the freight markets," he says. "Most of the ills of the industry can ultimately be traced to this legacy of boom and bust and the speculative mentality that this has engendered."

Given the uncertainty of the market and poor public image of the industry, it is not surprising that shipping is struggling to recruit its next generation. For Gordon, however, he was hooked at an early age by an industry he describes as "endearingly vague, understated and elusive". For anyone who is thinking of entering the shipping industry today, Gordon has some simple yet effective advice. "Steer up the ladders avoiding the snakes," he says. "Study the profession, qualify early and diversify until you find your niche in the industry where specialist knowledge and skill can yield added value and allow you to prosper."

Evidently speaking from experience.

More developments @ www.ITIC-insure.com

Since it's re-design in November 2001, the Club's website has received thousands of visitors. Feedback, both directly from the site, as well as through more traditional channels, has brought about some further changes. Modifications to the site have been made by way of both additions and adjustments. The main focus has been to improve navigation within the site and to make information more readily available.

"ITIC Publications" has moved from its previous home within the ITIC Members site to the main site. This allows both existing, and potential Members, as well as insurance brokers, to access electronic versions of the Club's literature. As well as featuring the latest Club publications, the section continues to offer both on-line and downloadable versions of previous issues of the "Intermediary", the Claims Review and the Club's Circulars. New additions to the Publications section include issue 11 of the Claims Review as well as two recently produced Club Circulars. The first, entitled "Bill of Lading Fraud", is a reissue of an earlier circular warning of the dangers involved in issuing bills of lading knowing the details to be incorrect. The second circular, "Ship Agents Beware!", focuses on the issue of ship agents being used by deceitful individuals to unwittingly assist in illegal immigration scams. This circular aroused considerable interest, from ITIC Members, and the maritime press, with both "Lloyds List" & "Fairplay" running articles on the subject. The Circular also resulted in an interview on Radio Netherlands. The Club's claims director, Julia Mavropoulos, was interviewed live by presenter Perro de Jong on 28th March, 2002. A recorded version of the interview has been uploaded onto the site in "real audio" format, and a transcript of Julia's interview can be found on page 31 within this issue.

Another new feature within the site has been the creation of the "Bulletins & Press Releases" section. In addition to providing visitors with warnings on current issues or problems throughout the industry, press releases, cuttings and articles written by ITIM staff for external publications can be found on page 31.
If anybody has an issue that they feel would benefit other Club Members by being featured in the Bulletins section, we would be more than pleased to hear from them.

Although hard copies of the Club's Rule Book are readily available to Members, insurance brokers and potential Members, the additional availability of the Rules in an electronic version has proved to be useful. An online version and downloadable Microsoft Word version of the Rules can now be found within the "ITIC Cover & Rules" section of the main site.

With it's redesign last year, the website saw the launch of the Credit Management Information Centre (CMIC). The cover page of issue 11 of the Claims Review was dedicated to the CMIC, advising of its availability and cases where its usage would have helped the Member. The CMIC has proved to be a great success, with many Members using the service to check whether the Club has debt records relating to specific companies or ships, as well as notifying debts using an on-line form. A self-running demonstration of how to use the system has been created and can be downloaded for viewing off-line. CMIC access is limited to those Members who have purchased Rule 10 (Additional Legal Expenses and Debt Collection) insurance. Passwords are accordingly required to enter the system. If you have Rule 10 cover, but don't know your password, please contact your account executive at the Club.

All Members are encouraged to use the site, and to promote it within their company. There is a wealth of loss prevention material and a visit to www.ITIC-insure.com, may well help your company to avoid a claim in the future.

The **Common Agricultural Policy**

a problem for ship agents, not just governments

ITIC Members in Europe need no introduction to the Common Agricultural Policy (CAP). It has been in force for the last 40 years and accounts for an astounding 50% of the budget of the European Union (EU). The sheer cost of CAP makes it a constant source of disputes between EU governments. For the benefit of those Members in other parts of the world, the Common Agricultural Policy is, as its name suggests, a policy which governs all agricultural matters in the EU. It covers a wide range of agricultural matters including economic support to farmers and the control of food production The CAP also controls the import and export of agricultural goods to and from the EU, and it is this aspect which is the subject of this article.

The implementation of the CAP has, in the past, resulted in the overproduction of agricultural goods in the EU and in huge stockpiles of goods (known at the time as "butter mountains" and "wine lakes"). One of the ways to prevent stockpiling is to export goods, but how can you export goods which cost more to produce than the world market price? The answer is that our old friend the CAP provides refunds to traders who export EU agricultural products to countries outside the EU. The CAP also provides for import refunds connected to the import of certain agricultural products into the EU. Imports are often the subject of quotas, which are granted to importers on a "first come first served" basis and involve the deposit of substantial funds by the importer, which become forfeit if the quotas are not taken up within the time period specified. CAP refunds for imports and exports to and from the EU are administered by one of the EU Rural Payment Agencies, but the physical import and export of CAP goods is controlled by the customs authorities. Customs have the duty of checking that shipments are (a) correctly described in the export refund guarantee form (sometimes by taking samples for analysis), (b) of sound and marketable quality and (c) exported within the time limits. The customs authorities also check the documents and stamp them if they are in order. It is these documents which trigger the CAP refunds.

Unless the trader negotiates his way properly through the minefield of EU regulations, he can find himself in a situation where he has irrevocably lost his CAP refund.

Traders obviously have a problem, but how does this affect ship agents? The customs clearing of import and export cargoes has traditionally not been the concern of the ocean carrier or its agent. The exception to this rule is cargo subject to CAP refunds. There is an increasing trend for cargo interests to demand that the ocean carrier (and therefore his agent) take the responsibility for lodging CAP documents with customs as a condition of booking the cargo.

Over the past few years ITIC ship agent Members in several EU countries have reported about 20 claims ranging from US$10,000 to US$200,000 which have resulted from the loss of CAP rebates by importers and exporters of foodstuffs from the EU. All of the claims faced by ITIC Members result from a failure to liaise properly with the local customs authorities.

Goods exported before CAP documents are registered with customs or without customs having an opportunity to inspect the goods

There are two requirements when dealing with customs. The first is to make them aware that the cargo is subject to a CAP refund and the second is to make the goods available for customs inspection **before** they are exported. A failure by the ship agent to present the CAP documents to customs before the goods are exported, or by exporting the goods before the customs have had an opportunity of inspecting them, will result in the loss by the exporter of the CAP rebate.

In one case, a 20ft container of butter was booked from a UK port to an African port. The butter was entered into the customs computer as CAP cargo. However, the container did not arrive at the port until 2300 hours on the Friday night before the sailing, which was at 0745 hours the next morning. As the container would have had to wait for some weeks before the next sailing, the person on duty that weekend, not realising the implications, decided to ship it. As customs had not been given the opportunity of inspecting the cargo, the CAP refund (of about US$10,000) was lost.

In another more serious case, 15 containers of milk powder were shipped from Barcelona to Manila without being entered into the customs computer system as CAP cargo.
The 15 containers were therefore automatically customs cleared for export and shipped. The agent attempted to redeem the situation by having the contents of the containers inspected at the discharge port, but unfortunately this made no difference, and the refund of US$200,000 was lost.

Export goods missing export dates

Another reason for the rejection of claims for CAP refunds is "late lodgement". Exporters must export goods within 60 days following the date of acceptance of CAP documents by customs. Failure to do so results in the loss of part of the refund for each day over the 60 days allowed; a delay of 17 days means the total loss of the refund. Goods exported from a port in one EU country and transhipped at a port in another EU country (eg. shipped in Dublin and transhipped in Rotterdam) must travel under customs control and must leave the transhipment country within the time limits provided.

An Irish exporter booked 6 containers of milk powder from Dublin to Yemen via Southampton. The cargo stayed at Southampton for a month because it was shut out from several sailings, and left the last port in the EU too late for the exporter to qualify for any part of the CAP refund.

Even where the agent is not responsible for lodging the CAP documents with customs he can still become involved in claims for loss of CAP refunds. A German ship agent accepted a booking for 16 containers of milk powder to Lagos from a forwarder. The forwarder's booking note stated "b/l will not be dated later than 31 December". As the ship was due on 24 December the agent did not bother to reject this stipulation. In the event the ship was delayed due to engine damage and did not arrive at the load port until 25 January, 25 days after the 60 day period for exporting the cargo had expired. The ocean carrier's bill of lading usually contains a clause exempting him from liability due to delay, but if the agent guarantees a shipment date, or fails to reject an attempt to tie the ocean carrier to a shipment date, then the ocean carrier will not be able to rely on this clause.

Failure to register import goods within license period

The problem of lost CAP refunds does not just involve liner agents booking containerised exports, it also involves imports of bulk foodstuffs. Charterers of ships carrying bulk foodstuffs, are often also the importers. Where the importers and charterers are the same party, it is usually a condition of the appointment of a port agent that he also accepts responsibility for properly registering the cargo with the customs authorities.

In one case, a ship called at a UK port carrying 14,000 metric tonnes of molasses. The port agent was also tasked with lodging the customs documents before the expiry of the charterer's import license. The port agent, having no expertise in the lodging of customs documents, sub-contracted the customs clearance to a specialist, who missed the date of the expiry of the license by one day. This resulted in the loss by the importer of his deposit of US$135,000 with the Rural Payments Agency.

Conclusion

As can be seen from the above, ship agents, by providing this extra service to customers (almost invariably free of charge), can find themselves on the receiving end of very large claims. Even when a service is provided free of charge, the duty to perform with skill and care remains. The EU Rural Payments Agencies have very little scope to be flexible and a minor breach of the strict provisions for obtaining refunds usually means the refund is lost. There is a "Force Majeure" provision in the CAP regulations, which applies when the trader is unable to comply with the rules because of circumstances outside his control. However, the regulations also make it clear that "Force Majeure" does not apply if the trader (or someone acting for him) makes a mistake, or does not know the rules which apply to the goods. There is obviously a need for ship agents to familiarise themselves with the intricacies of dealing with CAP cargo, and to make sure that all staff (not just those involved in customs matters) are broadly aware of the serious consequences of failing to follow correct procedures for CAP cargoes, or of guaranteeing that CAP cargo will leave the EU by any particular date.

It takes two...

A conference for P&I Club correspondents was held in Bristol in September 2001. Among the many subjects discussed over the two days, the following was thought to be an interesting range of views between service providers and service users, some of which probably apply to many business relationships.

Comments by the Clubs

Correspondents should confirm the name of the surveyor or lawyer and advise why the correspondent is appointing that particular one. This is necessary so that the Club can tell the owner.

Clubs need preliminary reports with comments.

Please make it easier to find the answer in a letter/report.

Tell us what the 'bottom line' is.

Give us advance warning of large fees in eg stowaway cases.

Suggest and discuss strategy.

Give us advance warning of any guarantee requirements.

Tell us if you have a conflict and whether you are acting in any other capacity, eg Lloyd's Agent, TT Club, network partner, etc. Generally this will be OK as long as you tell us about it.

Check with the Club if you receive instructions from the ship's agent.

Surveyors must render separate invoices and you must not subsume their bill within yours (the correspondent's bill).

Correspondents should always send on the original survey report even if they are providing a commentary and translation.

The cheapest is not always the best but Members are very cost conscious.

Receiving commissions from surveyors is grounds for sacking. Surveyors should always be independent.

Report claims trends when identified.

Be proactive.

Have local knowledge and advice available as emails so that this can be sent out as background to any new case.

Do not assume the Club claims handler has handled a claim from your region before. Claims handlers in the Club have to deal with about 400 files from about 40 different countries and their knowledge may not be as great as the correspondents suppose.

Use file references.

Maintain contact with the Port Authority, Coast Guard, Emergency Services, Government Maritime/Transport Departments and Agencies, so that you can assist a Club quickly and effectively in the event of a large/serious casualty.

Comments from correspondents

We hate voicemail. There should be an opportunity to transfer the call to an executive who is handling the absent person's desk.

We hate it when the case handler from the Club is away and doesn't tell us.

Why are the Clubs' staff suspicious? Often they don't give us all the documents.

We need clear written instructions. We need to be told who we are representing and what we are supposed to be doing for them.

We need the Case handler to make it clear in the instructions, if the cost of the survey/ intervention is for Club or Member's account.

Tell us what is happening.

Read what we write.

Accept our recommendations.

Correspondents need to be seen to be trusted locally ie. don't cut the Correspondent out by going direct to a local lawyer.

Once the ship sails communications from the Club decline dramatically. Tell us how things went.

More training for Club staff on local laws and culture. Visits from junior Club staff?

Can Clubs help us collect/pay fees payable by third parties or the Member?

Can Clubs guarantee third party fees? If Correspondents are to look to the Member for their fees please tell the Correspondent loud and clear as soon as possible.

Queries about correspondents' fees should be made immediately on receipt of the fee note not 30/40 days later.

Points about Club cover should be made as quickly as possible – preferably with a phone call as soon as the case is notified.

Where there is competition from ship agents, the clubs should support the correspondents.

Increasing complications of multi modal transport. Clubs should have a better understanding of this.

Use file references.

SINGAPORE LEGAL UPDATE

New legislation will help ship brokers to collect commission

In the last two editions of the "Intermediary" we have reported on how English law has been amended in a way which will assist brokers to collect their commission. We are grateful to Chan Leng Sun and Anna Quah of Singapore law firm Ang & Partners for providing us with news of similar legislation which has now been enacted in Singapore.

The Contracts (Rights of Third Parties) Act (Cap. 53B), the Singapore Statute, is broadly similar to the English statute. Singapore Law has however, also adopted some concepts from similar legislation in New Zealand.

One immediate impact of the Act, which will be well received by ship brokers, is that brokers can now take action to enforce the terms of a brokers' commission clause in a charterparty. Prior to the passing of this legislation an unpaid ship broker could not simply sue the owner to enforce the terms of a commission clause. This restriction applied even though the clause provided the broker should receive a commission from that owner. The problem facing the ship broker was the Doctrine of Privity. This provided that only parties to a contract (the charterers and owners under a charterparty) had enforceable rights and obligations. A non-party, such as a ship broker, could not simply sue to enforce the commission clause. The law did provide the ship broker with a remedy based on equitable principles but this was clumsy as the broker had to persuade the charterer to sue the owners on his behalf. If the charterers were not prepared to co-operate, the broker had to sue both them and the owners. These problems have now been removed by the Act.

The essence of the Act is set out in Section 2. This provides that a party who is not a party to the contract may enforce a term of it if the contract expressly provides that he may. If there is no express provision, the third party may enforce the term if it purports to confer a benefit on him. It is that provision that will be the most important for ship brokers faced with traditional printed commission clauses, such as those found in Baltime and Asbatankvoy charterparties. These confirm the owners' obligation to pay the commission but without expressly stating that the broker may, in his own right, enforce the commission clause.

The rights granted by the new Act are important and brokers should beware if a term appears in a charterparty specifically excluding the rights under the Act.

An important practical question is whether the broker now has a right to invoke the Admiralty jurisdiction of The Singapore Courts to arrest a ship to obtain security for his claim. Section 3(1)(h) of the High Court (Admiralty Jurisdiction) Act (Cap 123) allows an arrest for any claim "arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship". The Courts have previously been willing to interpret these words quite widely. Given the importance of Singapore as a maritime centre it is likely that the brokers' right to arrest will soon be considered by the Courts.

MISDIRECTED ARROWS
IGNORE THEM AT YOUR PERIL!

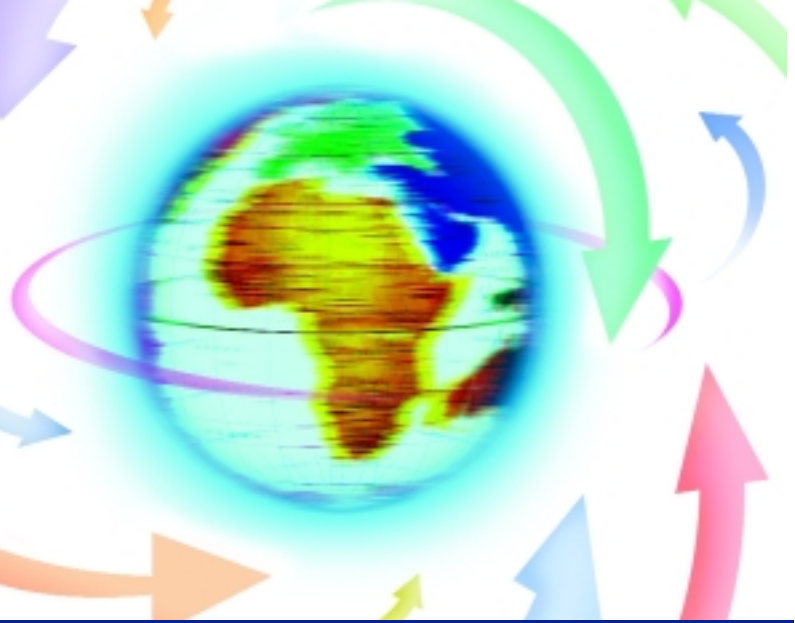
ITIC Members (particularly ship agents and ship managers) are regularly sued in addition to, or even instead of, the shipowner. There are a number of reasons for this.

In some countries, agents have joint and several liability with their principals, either in accordance with the law of their country or by port authority enactment, for liabilities which would normally only attach to the principal. These include cargo claims, customs penalties, dock damage and wreck removal. ITIC provides insurance in cases where, despite every effort to make the principal honour his liabilities, the agent is held liable to pay. In other cases the agent may have been careless in the way he has contracted and failed to make his agency status clear (see "Signing off..". in the September 1999 and March 2000 editions of the "Intermediary" available on the Club's website or from the Managers).

There are, however, cases when agents are joined into proceedings where they do not have joint and several liability and where there is no basis in law for a claim against them. The Club calls such claims "misdirected arrows" and spends considerable sums defending them, especially in countries where the legal costs cannot be recovered from the party making the claim. These costs can run into hundreds of thousands of dollars.

Although suing a party who is clearly not liable appears to be a waste of the claimant's time and money there is often a hidden agenda. Sometimes agents are joined into claims as a means of establishing jurisdiction in the claimant's own country. For example it is fairly routine for cargo claimants in India to commence legal proceedings in the Indian courts against both the ocean carrier and his local agent. Even though the bill of lading may provide for claims to be dealt with in a Far Eastern jurisdiction, the shippers bypass the jurisdiction clause by suing a local entity. Indian law provides that agents for disclosed principals have no personal liability if that principal fails to fulfil his liabilities. However, the fact that the local entity is not liable is not a deterrent, as costs awarded by the Indian courts for such misdirected actions are minimal. Sometimes the claimant and his lawyer genuinely believe there is a valid claim against the agent. In one case a consignment of hand made carpets lay unclaimed by the receivers in Rotterdam and were eventually sold by the port. The shipper of the carpets was convinced that the ship agent in Mumbai was to blame for their loss. This took twelve years to resolve.

When a Member is sued in addition to his principal, it is extremely important that a proper defence is filed for the agent, using all the arguments available. The law of agency of most countries provides that an agent is entitled to be indemnified by his principal for losses, costs and so forth properly incurred in the performance of his agency duties. It is, therefore, normal practice for the principal's P & I Club to appoint a lawyer to defend both the ocean carrier and his agent. This appears to be the right solution. The agent should not have been sued and so the principal should meet the costs for the defence. There are, however, potential dangers for ship agents who simply pass the claim to the shipowner's P & I Club's local correspondents and forget about it. It is imperative that the conduct of the claim be monitored by ITIC's correspondents. The reasons are best illustrated by the following two cases:



An agent in a South American country had no liability under his country's laws for a claim for cargo loss, but was nevertheless sued by the cargo owners in addition to his principal, a shipping line for whom he had been the agent for 60 years. The agent relied on the lawyers appointed by the shipowner's P & I Club to defend his interests. The incident occurred in 1991, but it was not until February 2000 that the court of first instance found both agent and principal not liable for the cargo damage. In the meantime, the shipping line had sold its ships and its business to another well known carrier. The P & I Club's local lawyer continued to deal with the matter until the end of 2000, when the appeal court found for the cargo owner and awarded a claim amount and costs totalling US$200,000. Only at this stage did the principal's P & I Club inform the agent that they would not be paying the claim or the costs which related to it. All P & I policies have a provision known as the "pay to be paid" Rule, which means that the shipowner must first pay the claim before the Club is liable for reimbursement. In this case the shipowner had ceased trading and could not do so. The cargo claimants seized funds in the agent's bank accounts to enforce the award. Only at this stage was the claim reported to ITIC. It was ascertained that the P&I Club's local lawyer had failed to enter the defence that the agent was not liable by reason of his agency status and it was by then too late for such a defence to be entered.

The second case involved an Indian agent, where both the agent and the foreign shipowner were sued. Legal proceedings in India take not years but decades to complete. As is often the case, by the time the claim had passed through the courts, the shipowner had ceased trading. As no security had been provided, a decision was made by the P & I Club to cease defending the claim. The local P & I correspondent withdrew his lawyer, but no-one informed the ship agent, as a result of which a default judgement for the cargo claim was entered against the ship agent, even though he was not legally liable.

Both these cases illustrate the need for agents to pay attention to all claims made against them, even though their principal's P&I Club appears to have taken over the handling of the matter. This is particularly important in jurisdictions where court cases take years to be finalised. It is not sufficient for the agent to sit back and allow someone else to conduct his defence. The agent must report any claim in which he has been named as a defendant to ITIC. The Club will not necessarily appoint a separate lawyer to defend the agent, but it will monitor the defence provided by the principal's lawyer to see that all defences available to the agent have been used. If appropriate the Club will try and obtain a Letter of Indemnity from the principal's P & I Club to avoid the situation where, ten years later, the principal's insurers will be able to simply walk away from the claim.

"Best endeavours"

ITIC's approach

ITIC makes it a condition of its insurance that its crew management Members use their best endeavours to be co-assured on their ship owners insurances. In applying this standard the Club has adopted the obligations its Members undertake in many standard form contracts, as terms requiring a party to "use their best endeavours" are common in management contracts. One example is Clause 4.1 of "Shipman 98", which applies this standard to the managers' obligations to provide the agreed management services, which may include crew management. Other managers contract on the "Crewman" agreement, which contains the same obligation in clause 2.3. The phrase is also frequently used in privately drafted agreements.

It has always been understood that "best endeavours" is an attempt to provide a higher standard of commitment but one that falls short of an absolute obligation. It is an imprecise term and it is easier to identify conduct that falls short of the standard than provide a definition of the dividing line. What constitutes best endeavours is likely to vary according to the facts at the time. The English courts have however provided the following guidance:

(a) Best endeavours is "an obligation to take all those reasonable steps which a prudent and determined man, acting in his own interest and anxious to achieve the desired objective, would have taken". That wording came from a case where one party was obliged to obtain planning permission.

(b) The standard of reasonableness (best endeavours) is that of "a reasonable and prudent Board of Directors, acting properly in the interests of their company".

We certainly agree that there must be an element of reasonableness in the definition as it is not intended to impose unreasonable obligations upon a Member when it comes to co-assurance in relation to crew management. On the other hand the issue should not be treated lightly.

The importance of being co-assured on the P&I and hull and machinery cover of the owners depends on how the crew manager contracts in the supply of crew.

Where the crew manager is working on a "Crewman A – cost plus fee" (or similar) contract, he is engaging the crew as agents for and on behalf of the owners. Subject to the affect of any applicable local legislation

the owner would be the crew's employer. The consequence of this is that any third party claimant would not be able to pursue the crew manager on the grounds of vicarious liability (i.e. that the manager is liable for the actions of the crew).

If, however, the crew manager was operating on the basis of a "Crewman B – lump sum" (or similar) contract, the position is different. He is then the employer of the crew and the risk of direct action by a third party on the grounds of vicarious liability is a very real one. In this situation in particular a crew manager would be very exposed if he did not have full P&I cover by way of co-assurance or otherwise.

It would be wrong, however, to conclude that co- assurance is not necessary for those contracting on "Crewman A". Third parties may not have grounds to sue the crew manager as the crew's employer (although they may still try) but the owners or their insurers may bring a claim against the crew managers to recoup sums they have paid out. "Crewman" contains an exclusion clause absolving the manager for the negligent acts of the crew. If the manager is not a co-assured on the policy there remains the possibility of a claim against him based on alleged negligence in the supply of crew (or even the supply of incompetent crew).

Our thanks to Xavier Garriga of Panamericano Venezolana for supplying both photographs.

In considering the obligation of best endeavours ITIC also draws on the well-known insurance concept of acting as a "prudent uninsured". In essence, if one assumes the manager had no cover from ITIC, what would a reasonable company do in terms of pursuing the owners and their underwriters if either of them did not agree to name the manager as a co-assured, or if the owners simply did not respond?

It is unlikely that simply requesting co-assurance and then not pursuing the owners for a response would constitute using best endeavours. But how far do Members need to go in order to assert that they have used their "best endeavours"? The answer will vary depending on the individual circumstances but it is important to remember that the Club's managers are always available for discussion.

If it is clear that the hull underwriters will not name the crew manager as a co-assured no matter how hard they are pursued, the issue then becomes one of risk management. One obvious factor is the differing levels of risk attaching to the role of the manager as defined by the "Crewman A" and "Crewman B" contracts. Another is the track record of the owners and the history of their dealings with the managers. There is no single determining factor. Managers should certainly consider whether they are acting prudently in undertaking the management in these circumstances. If the manager can demonstrate that all avenues have been explored with the owners, including the possibility that they change their hull underwriter, the Club would be able to accept that the Member had used his best endeavours.

No doubt once the "Crewman" contracts become more widely accepted (as "Shipman" has been over the last 10 years), the issues of co-assurance, best endeavours, and crew negligence exclusions are likely to become less of a problem. It is unlikely that a simple, practical and all encompassing definition of "best endeavours" will ever be found but the phrase clearly demonstrates a need to go beyond merely making an effort while at the same time not imposing an absolute duty to succeed.

Derivative Developments

Suzanne Starbuck of Merlin Corporate Communications charts the development of Forward Freight Agreements (FFAs) in the shipping industry over the last decade and asks if they have a role to play in the future

SINCE their launch in 1992, Forward Freight Agreements (FFAs) have grown in popularity. According to Clarkson Securities, there are now in excess of 150 players in the market with more than 3,000 deals taking place each year. Some sources say that the FFA market grew by as much as 25 per cent between 1995 and 2000 alone. But, what exactly is an FFA and does it have a future?

In simple terms, an FFA is a contract of difference between two parties – the buyer and the seller. The buyer contracts with the seller at an agreed price for a forward date on a particular route. When that date arrives, final payment is based on the difference between the agreed FFA price and the actual price on that day, normally as set by the Baltic Exchange Index.

It may sound a little risky but, given the inherent volatility of freight rates, FFAs are a useful risk management tool enabling companies to hedge their transactions as opposed to relying solely on the market. And, according to Ian Bland, director of Clarkson Securities, the benefits don't stop there. "FFAs enable you to deal with a single cargo filling a gap not commonly available on the physical market. They are also simpler to trade than the physical market with most FFAs being completed in minutes not days," he says.

They can also be tailored to meet individual needs, are completely flexible in terms of the route, size and time period, and are purely financial transactions so involve no delivery of cargo or ships. But is it all really as simple as it sounds and are there any pitfalls to be aware of?

The collapse of Enron last year sent shivers through the shipping industry. Some ship brokers estimated that Enron had been involved in as much as 30 per cent of paper trades in the capesize bulk market and about 20 per cent in the panamax market. With its own derivatives trading site and as a trader of freight futures with shipping companies, it was feared that Enron's demise would severely dent confidence in the derivatives sector as a whole. "In reality, Enron actually had much less involvement in the shipping industry than the publicity led us to believe. Its collapse posed no threat to either the FFA or physical market and the volume of FFA trade has increased since," says Bland.

What Enron's spectacular fall from grace did highlight was the need for counterparty security. Shipping may be a small business where everyone appears to know everyone else but where do you stand when a counterparty defaults? Under normal circumstances, FFAs do not require deposits or any other financial instrument to back up the contract. If, however, a counterparty is found to be unsuitable, it may be necessary to establish a bank guarantee or letter of credit.

Shipping companies have, to date, tried to limit their trades to counterparties they are comfortable with and know well. But all that may change if the FFA market becomes a cleared market thereby making it far more accessible and allowing other players in the door. "FFAs are already attracting a lot of people and not just shipping companies," points out Wilhelm Holst of Norway-based Platou ship brokers. "If the market is widened and players are dealing with people they don't know, they will need the comfort of knowing it is a cleared market, eliminating counterparty security risk," adds Bland.

This elimination of counter-party security risk is one of the greatest advantages offered by the Oslo-based International Maritime Exchange, otherwise known as Imarex. Founded in early 2000, Imarex is a fully-regulated professional freight derivatives exchange for the global maritime industry. Initially launched in November 2001, aimed primarily at the tanker market, Imarex recently made its first forays into the dry bulk market.

When it comes to counter-party security, Imarex has addressed the issue by providing a central clearing service. The Norwegian Futures and Options Clearing House, which already covers financial derivatives on the Oslo Stock Exchange, acts as the counterparty to transactions completed on Imarex. Handling of transactions and funds relating to the clearing is carried out by Norway's largest commercial bank, DnB.

And things seem to be going well. "On the tanker side, we have about 25 accounts including some of the world's biggest oil companies. Even the dry cargo side has as many as 13 accounts already and we will be working to expand on this over the coming months," says Tom Even Mortensen, managing director of Imarex. Other potential areas of expansion include bunkers, second-hand tonnage and maybe even containers. Imarex also received a recent boost when BP Shipping announced its participation in the exchange as an active trader and shareholder. "Having BP Shipping on the exchange is an important step in expanding the central marketplace for trading of freight derivatives," says Mortensen.

It's a somewhat different story, however, at the Baltic Exchange. The Baltic's own electronic platform, balticexchange.com, was launched in August 2001, providing users with electronic access to the exchange's freight market information, which is published daily. Forming a key component of the electronic platform is the online facility for the trading of FFAs, launched in April this year. Recent months have seen the Baltic Exchange busy refining its FFA facility, with the help of the Forward Freight Agreement Brokers' Association (FFABA), a lobby group representing the world's major FFA brokers.

But, due to the lack of demand for on-line trading, the Baltic has recently announced that its FFA trading facility has been 'mothballed' until further notice. "On-line FFA trading is still an emerging market and with just a few players it will take some time to really come alive," says the Baltic Exchange.

A Freight Market and Futures Consultative Group, which is due to meet for the first time in October, has been formed to enable the industry to discuss issues such as allowing principals to enter their own prices on the Baltic FFA trading system.

Despite the temporary suspension of the Baltic's FFA trading facility, the high volatility of freight rates in the shipping industry is still proving particularly attractive to non-shipping players looking to get involved in the shipping markets without physically exposing themselves to the assets. The anonymity and flexibility offered by FFAs could, therefore, boost their use even further.

But, it's still early days for FFAs in the shipping industry. According to Mortensen, there is a natural scepticism in the market so it is going to take some time. "But I've yet to meet anyone who doesn't think this market can move forward," he adds. According to Bland, FFAs have grown from nothing into a highly viable choice and the growth looks set to continue. But in which direction this growth takes place is anyone's guess. "There is no authority dictating how the FFA market will evolve so no one knows which way it will go. The market is directed by the consensus of its participants acting independently. Dictating the realistic dreams of such a disparate flock is beyond the scope of either the broking fraternity, an exchange, or even a group of principals to foretell," he says.

There does, however, appear to be sufficient scope for future growth. "There are currently 38 routes in the FFA market but new ones are coming on all the time as others disappear. Routes which two years ago were the bread and butter of the market are now marginalised," he adds.

Holst, who is also a board member of Imarex, is equally confident that the use of FFAs will continue to grow but warns that it's not going to happen overnight. "Shipping is a conservative business so it's still a matter of time."

Traditionally wary of anything 'newfangled', the shipping industry has been somewhat slow on the uptake when it comes to FFAs. Players in the market, however, remain confident that FFAs have a role to play in the future but to what extent that role is and for how long remains to be seen.

ITIC can insure its Members for FFA broking, however, Members must first advise the Club. If you are insured as a ship broker do not assume that FFA broking is included. It will need to be added as an additional insured service.

The ISM Code – *Episode 2*

ISM Implementation Phase One

The first major worldwide implementation of the ISM Code rolled over the shipping community on 1 July, 1998. In the build-up to that date the maritime press was full of dire warnings about the consequences of this dramatic legislation. The general shipping community expected something of a tidal wave of problems to start in the second half of that year. Instead a ripple of inconvenience barely interrupted normal business.

That implementation, four years ago, affected passenger ships (including passenger high-speed craft), oil tankers, gas carriers, bulk carriers and high-speed craft of 500 GRT and over.

ISM Implementation Phase Two

On 1 July this year the final implementation of the ISM Code scooped up almost every remaining commercial ship of significant size in the world. From the midpoint of 2002 all cargo ships of 500 GRT and above and mobile offshore drilling units must have an approved safety management system and be operating it. This now includes virtually every container ship and small coaster putting to sea for a foreign country. Although Ince & Co. do not foresee any particular problems for the operators of larger ships, such as container ships, in this final stage of implementation of ISM, there has been hardly a word in the press about the difficulties faced by operators of the generally smaller ships that this second stage will affect. Ince & Co. suspect that all concerned have treated this phase of implementation as a "non-event" based on the experiences of 1998 – how seriously would you take a second Y2K warning?. As recently as February 2002 Ince & Co. discovered owners and operators of small general cargo ships to be completely ignorant of ISM, and it is not inconceivable that this ignorance is quite widespread amongst smaller ship operators.

Methods of Implementation

It is necessary only to consider the differences between the types of ships involved in the first phase of implementation and some of the ships in this second stage to realise that a different approach is necessary in the preparatory stages of a safety management system. The tankers, bulk carriers and passenger ships that needed to comply by 1st July, 1998 were, in the main, relatively large ships. Admittedly bulk carriers can be as small as 3000 tonnes (or even less) but the vast majority are much larger with crew that require higher grades of certificates and with greater numbers onboard. Even though tankers can be quite small, due to the perceived increased pollution risk, this class of ship has been more tightly regulated than other types of ship for a number of years now. These factors probably made the transition into the ISM age much easier for operators of these ships.

A large amount of the world's coastal trade is carried on by much smaller, more flexible ships that can enter much smaller ports and harbours. The operating margins on these ships in terms of absolute profit are often much less than the pro rata profit margin on a larger ship. Furthermore regulations often require a much lower grade certificate of competency for an officer in the same rank on these small ships. A lower grade of certificate means a lower level of training and/or academic achievement at the very least. With the small number of personnel that are carried onboard smaller ships, with the consequential reduced capacity for extra paperwork, and the potential reduced calibre of officers, it is easy to see that a safety management system prepared for a large bulk carrier would be inappropriate for a small general cargo ship of 1000 GRT.

Risks

After the previous (1998) relatively undramatic implementation there may be a temptation for operators of stage two ships to provide their fleets with a "standard" safety management system that has been used on much larger ships for the past four years. This approach will be inappropriate and will overload the (few) seafarers on these ships with a huge paperwork burden. This may well result in these seafarers simply "ticking the boxes" (or worse, simply ignoring the safety management system procedures altogether) of a system that can be demonstrated as being incorrect for that type of ship. Without careful monitoring of the operation of the safety management system by the ship operators this practice is equivalent to setting time bombs that will explode in the face of the operators following a casualty.

In the recent case of Eurasian Dream [2002] 1 Lloyd's Report 719, the Judge observed that the documentation placed onboard the ships was voluminous and reading it would have occupied two to three weeks of the Master's time. Coincidentally a recent study reveals that excessive paperwork exists in many safety management systems. The Judge also considered that the ships should have been supplied with one concise and clear manual catering specifically for that ship. In other words a safety management system that was designed from the ground up for that type of ship operated by that company, i.e., ship and company specific safety management system.

Ince & Co's own experience is that there is an ISM aspect to virtually every maritime casualty. Some of the larger ISM problems that Ince & Co. have discovered which are associated directly with the casualty have implications that impact on the seaworthiness of the ship. With the paper trail generated through the safety management system, it is much easier for a claimant to demonstrate that the owner or manager failed to exercise due diligence in the operation of the ship. This will be an even greater issue for smaller ships with their associated lower manning levels and pressure of work.

1 July 2002: a date of quiet danger for the complacent. ISM: a dangerous tool in the wrong hands.

Our thanks to Clive Reed, a Master Mariner, from Ince & Co, which he joined in London in 1997. He has been involved in the investigation and handling of many casualties worldwide including the "Orapin Global/Eviokos" collision off Singapore and the total loss of the cruise ship "Sun Vista" in the Malacca Straits. Prior to joining Ince & Co, Clive spent 23 years at sea including eight years as Master of handysize and panamax bulk carriers. After coming ashore in 1994, Clive worked for a major Monaco-based shipowner, developing in-house systems for compliance with SOPEP, cargo stowage and securing regulations and the ISM code.

READ THE BILL OF LADING!

A WARNING FOR AGENTS

ABC Agency Co were the agents in China for an NVOC based in Washington State, USA which operated a service between the USA and various Asian ports. The NVOC ceased trading through insolvency, and containers carried under their bills of lading remained stranded in various Asian ports. ABC Agency Co contacted the cargo interests involved with all the containers booked through them and offered to arrange for the containers to be forwarded to their final destination. Unfortunately the cargo interests had to pay additional freight even though they had already paid full freight to the NVOC. The cargo interests were fortunate that ABC Agency Co was professional enough to make sure their cargo reached its destination – in similar circumstances cargo has ended up being sold by ports and terminals to cover costs.

Imagine the agent's surprise when, several months after the safe delivery of the containers, both they and an affiliated company in the USA were in receipt of a court summons from cargo interests in the US claiming a return of the additional freight paid and other damages resulting from delay in delivering the cargo. The basis of the claim by the US cargo interests on a company which was obviously acting as an agent was a clause on the reverse of the NVOC bill of lading. This clause stated:

> Every servant or agent or subcontractor of the Carrier shall be entitled to the same rights, exemptions from liability, defenses and immunities to which the Carrier is entitled. **For these purposes Carrier shall be deemed to be acting as agent or trustee for such servants or agents or subcontactors, who shall be deemed to be parties to the contract evidenced by the bill of lading.**

A clause similar to this is incorporated in most bills of lading. It is commonly known as the "Himalaya" clause (see the article"Ship Agents' Liabilities – "Himalaya" Clause or Standard Trading Conditions?" in the February 1998 edition of The Intermediary which can be found on www.itic-insure.com) and is meant to confer on the carrier's sub-contractors and agents (who are not parties to the bill of lading contract) the same defences and limitations which the carrier enjoys under the bill of lading. The normal wording of a "Himalaya" clause does not include the final sentence of the boxed clause. This clause has the effect of making the agent jointly and severally liable with the carrier for the carrier's liabilities. It was felt by ITIC's US lawyers that, whilst there were defences to the claim, the local courts, which were not maritime courts, were likely to interpret the clause at face value and find for the cargo interests. The claim was therefore settled. ABC Agency Co. had never read the reverse of the NVOC bill of lading, and did not realise that it contained this very unusual and damaging addition to the Himalaya clause. Have you read the bills of lading you sign?

IS IT TIME TO CUT UP YOUR RUBBER STAMPS?

It is time for ship agents to examine the rubber stamps they use when signing bills of lading and consider destroying some of them. Ship agents are sometimes sued in addition to (or instead of) their principal, the contracting carrier, for loss or damage to cargo. The reasons for this vary. They include plain ignorance of the law by the cargo interests and an unhelpful local statute which makes the ship agent jointly and severally liable with the carrier. A third reason is preventable. Agents sometimes put their own head in the noose by using a rubber stamp which either does not identify or mention the principal, or is set out in such a way that it is not clear which company (agent or principal) is the contracting carrier. An example was:

UNLUCKY & CO

John Smith

As agents

This rubber stamp was placed on a blank liner bill of lading, which contained no reference to the carrier. Unlucky & Co were the agents to the shipowner, and should have signed the bill of lading on behalf of the shipowner (or the master). Instead John Smith, on behalf of Unlucky & Co, has signed the bill of lading in a way that can be interpreted to imply that John Smith is the agent for Unlucky & Co and Unlucky & Co are the contracting carrier. Unlucky & Co, an Indian ship agent have been the subject of legal action in France since 1997 for damage to industrial plant and machinery shipped from Mumbai to Thailand. They were involved for no other reason than the rubber stamp they used.

In another case, an agent in Singapore signed an NVOC bill of lading which had already been printed with the name of the NVOC, so there should not have been a problem in establishing the identity of the contracting carrier. However, the agent managed to place his rubber stamp in exactly the right position to give the impression that the NVOC was the agent and the agent was the carrier:

UNTRUSTWORTHY NVOCC CO LTD

AS AGENT FOR CARRIER

UNLUCKY & CO

John Smith

This rubber stamp has resulted in a Singapore ship agent being sued in the US courts for delivery of cargo worth US$350,000 by the NVOCC or his agent without taking the original bills of lading in exchange.

Both these cases have one thing in common. They involve large, well known and reputable ship agents who have been in business for many years, and carriers who have disappeared. The cargo claimants and their lawyers are probably well aware of the fact that Unlucky & Co acted as agents, but the agents' own rubber stamps have enabled them to look for satisfaction of their claims from a party who is able to pay them, rather than the bankrupt carrier. Look at your rubber stamps, and get the scissors out!

MEDIATION – RECENT DEVELOPMENTS

The last issue of the "Intermediary" contained an article on mediation. Since that article was published there have been three major developments affecting the use of this increasingly popular form of dispute resolution. Bimco have released a new standard dispute resolution clause which provides for the possibility of mediation. The London Maritime Arbitrators Association has published the LMAA Mediation Terms (2002). These developments provide the basis for mediation in the maritime sector. The other important development has been the judgement of the Court of Appeal in Dennett v Railtrack which provides a warning of a potentially expensive penalty for parties who decline to mediate.

Mediation involves the appointment of a mutually acceptable person, the mediator, to attempt to assist in reaching a settlement of the dispute. The mediator is not there in the capacity of a Judge or Arbitrator and does not pass any judgement on the parties' position.

The option of mediation is often only considered after proceedings have been issued. There is no need to have any contractual provision since the process is a voluntary one. The new Bimco Clause is, however, intended to make a written provision for the possibility of mediation to insert in charterparties. It extends the provisions of the standard law and arbitration clause to provide a wider "dispute resolution clause" for inclusion within charterparties. The new clause, therefore, successively makes provisions for the governing law of the charterparty, that any disputes would be subject to arbitration and that the parties have the option of attempting mediation.

The LMAA Mediation Terms (2002) provide a more detailed framework for the mediation to take place.

Although mediation is a voluntary process the courts may impose penalties if a party does not agree to mediate. In the recent case of Dennett v Railtrack the English Court of Appeal held that the defendants had been unreasonable when they refused to consider mediation. In the circumstances the Court was not willing to order the other party to pay the defendants' costs despite the defendant being successful in the matter. The Court's discretion to make such orders means that litigants may have to give serious consideration to the grounds upon which they are declining the suggestion of mediation if the matter is being litigated before the English Court. The potential penalty for unreasonable behaviour is also a feature of the Bimco Clause and LMMA terms. The clause provides that if a party does not agree to an offer to mediate then the fact may be brought to the attention of an Arbitration Tribunal and taken into account when the Tribunal is allocating the costs of the arbitration. The LMAA terms provide that the mediator may order the costs of a mediation to be paid by a party whose conduct has been unreasonable.

London market to revise **hull insurance clauses**

ITIC's shipmanagement Members should be aware that underwriters in the London market are in the process of revising the standard hull insurance clauses to bring them into line with current market practice. No major changes to the wording of the clauses are envisaged, and ITIC's members' responsibilities are not expected to be significantly altered.

Underwriters are intending to make the clauses more customer-friendly, and to update them where necessary to reflect developments that have taken place in the shipping industry since the clauses were last reviewed in 1995. Those developments, of course, include the entry into force of the International Safety Management Code. Shipmanagers' responsibilities under ISM will not be affected by any revisions to the clauses.

The new clauses are expected to come into force on 1 November, 2002, following a consultative review by underwriters, insurance brokers, shipowners, and claims adjusters. ITIC will monitor their progress, and will keep Members informed of any relevant developments. Shipmanagement Members, meanwhile, should continue to be named as co-assureds under hull insurance policies on all insurances taken out in respect of ships under their management,

New FONASBA form

The new FONASBA (Federation of National Associations of Ship brokers and Agents) Standard Liner and General Agency Agreement is now in use. In a bid to modernise their documentation, FONASBA decided to combine the Standard Liner Agency Agreement and General Agency Agreement into one agreement.

The new agreement, which was finalised at the end of 2001, was approved by BIMCO in March, 2002. According to FONASBA, feedback so far has been very positive. The new document also serves as an ideal basis for in-house documentation.

instant messenger systems

A number of ship broker Members have asked the Managers for their views on the use of instant messenger systems, such as those provided by MSN Messenger, Yahoo and AOL, as a medium for doing business.

These systems allow written messages to be sent but do not create a permanent record of the communications. The systems may be sufficient to circulate general market information but if these exchanges lead to negotiations via the same system there is no automatic record of the messages sent. This can be problematic if a dispute develops. In the Managers' opinion, brokers should either avoid using the system for important exchanges (offers, recaps and so forth) or should take steps to create a record by either printing off messages or storing them electronically.

Money laundering

A number of Members who are sale & purchase brokers have approached us to report that banks are expressing a reluctance to open accounts in the names of buyers or sellers for sale and purchase transactions. The banks have generally attributed this reluctance to the impact of money laundering prevention and the increased costs they face in ensuring compliance. This issue may have serious implications for sale and purchase brokers and the Club intends to circulate Members who are obviously affected during the course of the next year. If, however, any Member would also like to advise the Club of problems in this area we would be pleased to hear from them.

ITIC's trading conditions for marine surveyors & consultants

Shipowners use them, so do forwarders, hauliers, rail & airline operators, warehouses, ports and terminals, agents and brokers. Why not surveyors and consultants also?

In the last issue of the "Intermediary", we reviewed the many advantages for a surveyor or consultant of using standard trading conditions. Following consultation with a number of industry bodies, ITIC has produced its own version of standard terms for use by surveyors and consultants.

These are available for Members use, free of charge, and copies can be downloaded from ITIC's website at www.itic-insure.com.

The Institute of Chartered Ship brokers revises its standard trading conditions

The Institute of Chartered Ship brokers (ICS) has updated its standard trading conditions. The new 2002 version received the approval of the Institute's Federation Council in September 2002 and will be circulated for use by company members and individual members operating for their own account from October 2002.

The new version covers both ship agency and freight forwarding activities, but gives company members the option to include their forwarding activities (or not,as they may so decide). The 2002 standard trading conditions supersede the 1993 conditions which will be withdrawn from use upon issue of the 2002 version.

ITIC was pleased to provide assistance and advice to the ICS in formulating the new wording, and recommends their use by ICS members.

ITIC staff

Lloyd's Ship Manager's 12th Annual Conference will be held on 9th and 10th October in Cyprus. Stuart Munro and Charlotte Kirk will be attending from ITIM. On Tuesday 8th October there will be a reception for ITIC Members, with further details following in due course. If you are interested in attending please advise by email to ITIC@thomasmiller.com.

ITIM hosted a golf day in October last year for insurance brokers who bring business to ITIC. A good day's golf was enjoyed in damp autumnal conditions. The winner was John Hodges of Ramon Insurance Brokers, with Graham Johnson of HSBC Insurance Brokers coming second.

Adam Jacobson, the ITIC area representative for France, and Zareena Hussain, a director of ITIM, represented ITIC at a cocktail party hosted by the French Chartering and Sale & Purchase Ship Brokers Association held in Paris in June. Zareena and Adam were joined by the Club's representative in France, Joseph Ducene. The event takes place every two years and is attended by many brokers and their shipowning and chartering clients.

Joanne Melder (née Thompson)

Staff News:

We are pleased to welcome Joanne Melder and Matt Mitchell as new account executives.

Joanne has joined ITIC from the crew and injury department at Steamship Insurance Management Services Ltd where she was employed from 1995 following completion of a law degree at Sheffield University. Joanne will be responsible for underwriting claims and marketing to the Members of the Club in several countries including India, Israel, Greece, Malta and the UK. Joanne was married on 7th September and will now be known as Joanne Melder.

Matt spent six years at sea with P&O Containers, obtaining his second mates certificate before studying for a degree in maritime business and law at the University of Plymouth. He then worked at the UK P&I Club before joining ITIM. Matt has applied to be a member of the Institute of Chartered Ship brokers (ICS) and won the Dundee, Perth and London Shipping Co. Ltd. prize for Port Agency in this year's ICS exams. Matt will be responsible for underwriting, claims and marketing for ITIC in the Middle East, Turkey, Egypt, and The Lebanon, as well as the U.K.

Matt Mitchell

news

The Baltic Exchange Tennis Cup

Damian Mustard and Chi Wong with the Fehr Cup

Given the weather that England has enjoyed this summer it was a minor miracle that not a drop of rain fell on the Surbiton Tennis Club where the Fehr Cup Competition was played on 11th July.

ITIC/Thomas Miller & Co. had won the cup in 2000 but following the loss of one of the winning pair had not defended it in 2001. This year we entered not one but two pairs with Chi Wong of the IT Department joining ITIM's Damian Mustard in the lead pairing. The second pair saw ITIM's finance director, Steve Harvey, playing with ITIC's Chairman, Paul Vogt. The draw provided an opportunity for this pair to meet the Chairman's daughters in the second round and they appeared to be well on the way to winning their first round match at 4–2 in the first set. At this point Steve Harvey, who was rumoured to have been in strict training for this event, forgot that he had achieved veteran status and hurled himself across the court in an attempt to return his opponent's cross court volley. Unfortunately his calf muscle was not ready for this heroic effort and the resulting tear put an end to the Harvey/Vogt partnership's participation in the competition.

ITIC's first pair were the number one seeds for the event and justified their ranking by reaching the final without dropping a set. However, the final was more evenly balanced with the E.A. Gibson pair losing the first set 6-3 but winning the second by the same score. The final set saw the ITIC pair raising their game to new heights with Damian Mustard's return of serve being especially worthy of note. A fine 6-2 victory resulted in the Fehr Cup returning to International House for the second time in three years and we look forward to 2003 with some confidence.

The **Fairplay Cup**

The Fairplay Cup is an annual sailing event which takes place in Port Solent, Portsmouth. On a grey June day with a fresh wind blowing 21 companies took part, racing Sunfast 37s. Teams taking part included The Denholm Group, The Baltic Exchange Sailing Association, Dorchester Maritime and Richards Butler, to name but a few. ITIM provided two crew members, Stuart Munro and Matt Mitchell (far left of the picture), to the V ships yacht which won first prize.

The Club's Chairman, Paul Vogt, accepting flowers at the Mumbai Seminar.

Mumbai **Seminar**

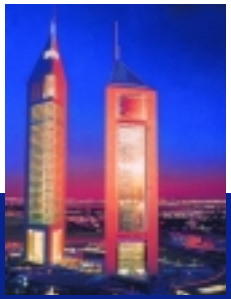
Monday, March 11th, 2002 saw approximately 100 ITIC Members and distinguished guests gather at the Taj Mahal Hotel, Mumbai for a very successful seminar and lunch.

The Club's Chairman, Paul Vogt, was present together with fellow Directors, Bjorn Engblom (Gulf Agency Company) and Harry Gilbert (Wallem Group Ltd). The speakers included Tony Payne and Julia Mavropoulos from ITIM, Harry Gilbert and Mr S Venkiteswaran, Chairman of Pandi Correspondents Pvt. Ltd., the Club's correspondents in India.

The programme included a lively question and answer session which attracted contributions from retired ITIC Director Russi Cooper and the current Director General of Shipping Mr D T Joseph.

Opportunities for Club Directors, Managers and Members to meet together are comparatively rare and judging by the comments made at this seminar they should be taken whenever possible.

Delegates at the ITIC Mumbai Seminar, including the Director General of Shipping, Mr D.T. Joseph.



Dubai **Board Meeting**

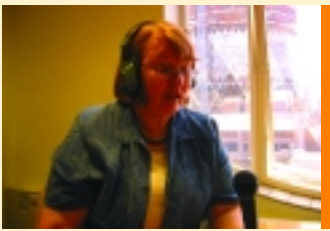
The ITIC Board met at the spectacular Emirates Towers Hotel in Dubai on 13th March, the Chairman and two other Directors having previously attended a Members' seminar and Reception in Mumbai on 11th March.

The Board Meeting took place against a background of premium increases in most sectors of the insurance market, and a continuing reduction in share prices on the world's stock markets. Income from investments had accordingly been severely reduced. The Directors received a lengthy presentation from the Club's investment managers who reported a return of almost 1% on the Club's interests for the year to date (which had increased to 1.7% by the close of the Club's policy year in May).

The Managers reported that the Club had again achieved an operating surplus for the previous year and after discussion the Directors decided to ignore the insurance market trend and for the seventh consecutive year return premium to the Members by means of a continuity credit. They had also noted the fact that by virtue of its focus on professional indemnity insurance for professionals in the transport industry, the Club had not faced any claims arising out of the 11th September, 2001 attack on the New York World Trade Center.

The Directors also took the opportunity to meet Members, insurance brokers, and lawyers from the United Arab Emirates at an evening reception which they hosted at the Jumeirah Beach Club.

The next Board Meeting will be held in London in September and in April 2003 the Directors will be meeting in Genoa.



Going Dutch

Radio Netherlands interviews **Julia Mavropoulos**

ITIC's circular titled "Ship Agents Beware! The ship calling for a crew change may involve illegal immigrants" was well received by the Club's Members and has subsequently prevented several agents falling foul of people smugglers and the ensuing immigration problems.

The circular was also given a lot of press coverage, which culminated in an interview with the Club's Claims Director, Julia Mavropoulos, by Perro de Jong of Radio Netherlands. The following is a transcript of that interview, which can be heard on Radio Netherlands website: www.rnw.nl or on ITIC's website: www.ITIC-insure.com.

Interview between Julia Mavropoulos and Perro de Jong

Julia Mavropoulos: What happens is that a ship agent very often gets an approach from a ship owner that he doesn't know, asking him to take care of a call of his ship in the ship agent's port for a crew change. This is how the industry works; you don't necessarily deal with people you know. So what they are asking the agent to do would be to send a letter that the ship owner can take to the Embassy, lets say the Dutch Embassy in Egypt and they would take along a letter saying that these people were going to join a ship in the Netherlands and then visas would be issued.

When the crew arrive they either disappear from the airport or they disappear from the hotel that they are placed in. There is no ship, no ship owning company and they are not crew, it's just a way to get illegal immigrants into a particular country.

Perro de Jong: Is it clear who is behind these types of scams?

Julia Mavropoulos: Well there are various people, the worst one is someone who is based in Piraeus but we understand from our investigation that he is not Greek. The first notification we had was from a Dutch company in 1989 with this problem and the most recent one we had was from a Canadian company two weeks ago, and it's all the same person.

Perro de Jong: But why hasn't anything been done about this in those 13 years?

Julia Mavropoulos: About five years ago, we have an office in Greece and they found out who this person was and where he was operating from, this man was using the same telex number for about 6 years. The local police were notified but there was very little that they could do without someone swearing out a complaint against them because the offence was committed outside Greece.

Perro de Jong: So what can shipping agents do to distinguish between real legitimate and bogus companies?

Julia Mavropoulos: I think that they can check with us first of all.

We had one instance where an Irish ship agent came to us because it sounded very suspicious that 5 people were coming to Ireland, when in fact they then wanted to get on an aeroplane to come to England. We then found out that the ship that was supposed to come had been scrapped three months before and that the company, which appointed them, which in this case, is a company from Bangladesh, had actually been the subject of circulars by the Canadian Immigration Authorities.

This is another pointer for ship agents, if they don't have regular telephone numbers and if their cell phones are not an office telephone number, then this would be a pointer that all is not well.

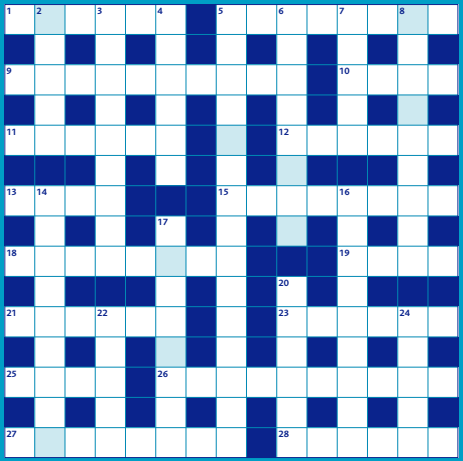
Perro de Jong: Did you see any increase in the number of smugglers?

Julia Mavropoulos: I think it has been fairly steady for the last 5 years. We keep thinking that it's going to stop, but it never does. I don't think it will. There are always going to be people who want to be taken to another country where life will be better.

the intermediary crossword

No 1

Complete the crossword to reveal a word formed by the letters in the highlighted squares which describes a location where you might find a ship waiting to take your cargo.



Clues Across

1. You'll have such a bill if you carry cargo (6)
5. At sea, you'll find these above the gaff (8)
9. Forerunners (10)
10. River home of busy German port (4)
11. Position in boat, or caress (6)
12. Behind, on the vessel (6)
13. Sounds lazy, but is actually worshipped (4)
15. Democratic process (8)
18. Large store selling variety of goods (8)
19. Laos too (anag.)
21. Look at superficially (6)
23. In good form (2, 4)
25. A lot of cargo comes and goes in this direction (4)
26. You'll find it in Tennessee, maybe by train (10)
27. Awfully (8)
28. Goes in (6)

Clues Down

2. Separated (5)
3. Mob oil rig for extremely confused situation (9)
4. Large seabird (6)
5. ITIC publication (3, 12)
6. Vessels go on these, and through them (8)
7. Every ship should have one (5)
8. Requiring considerable time and effort (9)
14. What the owner may get if discharge is delayed (9)
16. The sort of intermediaries ITIC deals with (9)
17. Rented vehicle (5,3)
20. Type of charter party (6)
22. Without which there would be no maritime trade (5)
24. African river (5)

To enter the competition to win a bottle of champagne, email the word in from the highlighted squares to ITIC@thomasmiller.com, with your name and contact details using "crossword competition" as a subject title. Closing date for entries will be 31st December 2002. The winner will be the first name drawn on 3rd January 2003.

ITIC

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