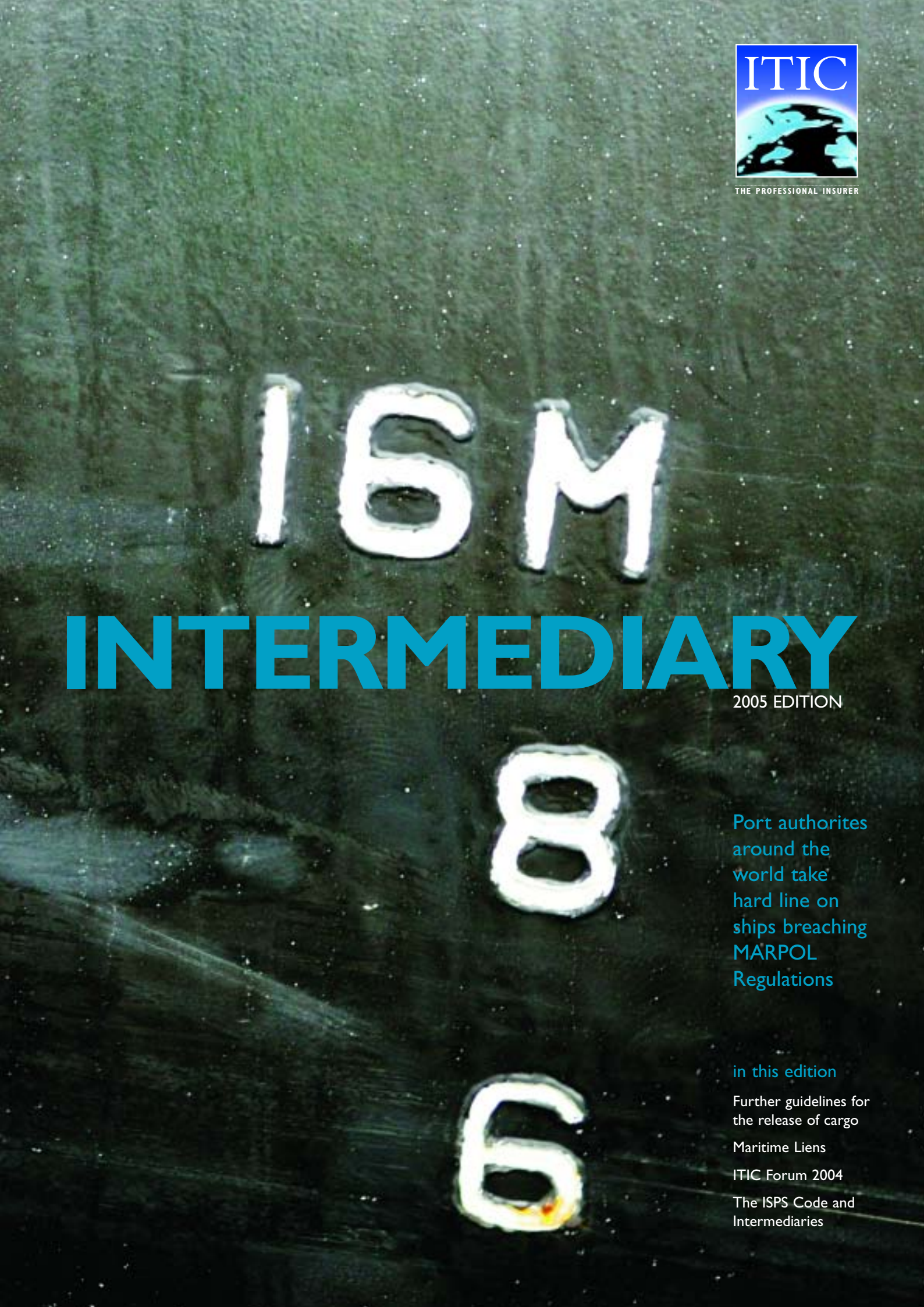


INTERMEDIARY

2005 EDITION

Port authorites around the world take hard line on ships breaching MARPOL Regulations

in this edition

Welcome from Harry Gilbert, Chairman

Although I have now served as Chairman of ITIC for only nine months I have had the pleasure to have served on the Board for 13 years.

Someone told me very early on in my career that there is nothing new in the shipping industry and the one thing that has been a constant over those 13 years is that the same type of claim keeps cropping up time after time. In ship agency it is the release of cargo without a valid bill of lading. In ship management it is the by-passing of oily water separators and in broking it is inaccuracies in the description of the ship or overly optimistic valuations.

These claims continue despite the fact that the Club's managers regularly publish articles and circulate letters to members warning them of the dangers. In this edition of the Intermediary you will again find articles on release of cargo without a bill of lading and on the use (or lack of it) of oily water separators.

I have always felt that one of the biggest advantages of being a Member of a mutual Club is that when things do go wrong the managers and Directors of the Club have an understanding of the issues surrounding the claim and the commercial pressures on the Member. Indeed in many cases the Directors will say "there but for fortune go you or I". It is for this reason that the Directors are drawn from the professions represented by the Members and this "mix" is carefully maintained. In this way any Member who finds himself in difficulty, through no fault of his own, will at least be sure that his problem is well understood and that he will get a sympathetic hearing.

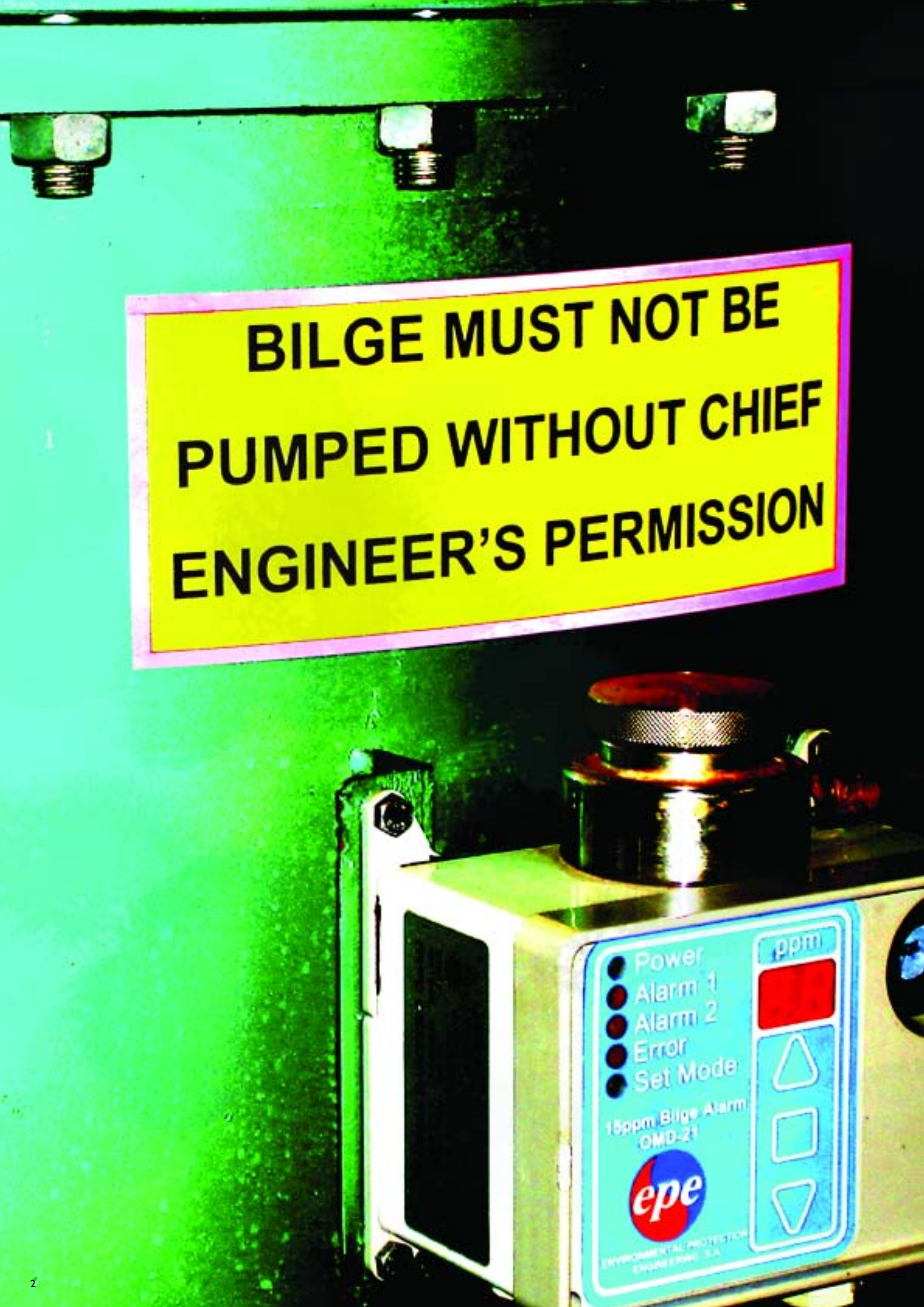
I am fortunate to have taken over as Chairman at a time when the Club is in a very good position financially and for the tenth year in a row Members have again been awarded continuity credits. We all hope that this trend will continue but unfortunately it can never be guaranteed.

Finally I would like to thank the Members for their support and to thank the managers for their excellent administration of the Club's affairs.

ITIC

THE PROFESSIONAL INSURER

Features in this issue: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WHISTLEBLOWERS, OILY WATER AND SHIP MANAGERS

Port state authorities around the world, but most notably in the USA, Germany and France, are taking an increasingly hard line on ships which have, or are suspected of having, breached the MARPOL Regulations which govern the limits on the amount of oil which ships can legitimately discharge into the sea.

The trade press has been full of reports where engineers on ships owned by some of the biggest names in shipping have been accused of, or have been found guilty of, breaching MARPOL Regulations by using the engine room oily water separator improperly, or by-passing it altogether to discharge oil directly into the sea. In other cases, the offence is the falsifying of the ship's records (particularly the Oil Record Book) by the crew. The United States Coast Guard and Department of Justice have been extremely aggressive in the investigation and prosecution of the owners, operators and crew of suspect ships. US law also enables the US authorities to offer rewards of up to 50% of the fine imposed to those who report alleged violations (the so-called "whistleblower" legislation). In April 2005 Evergreen International S.A. pleaded guilty and was fined US$25,000,000. In 2004 the owner of the "GUADALUPE" was fined US$4,200,000, of which 50% (US$2,100,000) was paid directly to the second engineer, who blew the whistle on the practices on board. With such rewards on offer, crew loyalty and the fear of blacklisting by owners or managers is unlikely to have any effect.

Why does this involve ship managers? For two reasons:

P&I Cover

P&I cover for deliberate (rather than accidental) breaches of MARPOL Regulations by crew is only provided subject to the discretion of the P&I Club's Directors, which discretion will not be sought until the matter is concluded. It will be necessary for evidence to be provided to satisfy the Directors that reasonable steps were taken to avoid the offence. The International Group of P&I Clubs issued a circular in June 2005, in which it is made clear that the Clubs are unable to provide security while proceedings are underway (except in exchange for counter security) either for fines or for costs incurred in defending criminal or civil proceedings. Therefore, although the ship manager will be co-assured on the owner's P&I insurance, the manager's position vis-à-vis P&I insurance will be identical to that of the owner.

The manager as "operator"

In the US version of MARPOL, the **Act to Prevent Pollution from Ships (33 USC 1901)**, the operator of a ship is defined as "a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel". The US authorities regard the ship manager as the operator of the ship, and several ship managers have already faced direct claims from the US authorities, while other ship managers will undoubtedly do so in future.

Even where it can be evidenced that the crew member's actions in violating the MARPOL Regulations are contrary to the company's policy, the owner (or the manager) will still be vicariously liable for any actions performed in the course of the crew member's duties, and the owner (or the manager) will still face a fine. However, if it can be evidenced that the ship has a proper documented voluntary compliance system on board, then it should be possible to obtain a reduction in any fine and to avoid criminal prosecution of the owner or manager.

It is, therefore, vital that the owner or manager can demonstrate to the relevant authorities that he has a voluntary compliance programme in place, which is properly documented and properly enforced.

Some suggestions with regard to voluntary compliance with MARPOL Regulations are:

- clear and concise company policies regarding compliance and reporting, possibly in the form of an Environmental Management Systems Manual. The Manual should be written in both English and the language of the crew;
- documentation evidencing that the crew has been given a copy of the company policy in writing, which the crew should sign off agreeing that they understand the policy and will abide by it;
- systematic training of the crew in MARPOL compliance, record keeping and equipment;
- up-grading of any equipment (particularly the Oily Water Separator) which is not functioning correctly;
- voluntary reporting of any suspected or discovered violations, either to the flag state, or to the US authorities if the ship is bound for the USA;
- companies should conduct periodic reviews, on-shore and on-board, to ensure that policies are being adhered to and these reviews must be carefully documented. This would involve periodic comprehensive audits by both outside auditors and shoreside high level engineering personnel of waste oil treatment equipment on board and ship's records (such as the Oil Record Book and Bilge Soundings Log) to ensure compliance.

In view of the position regarding P&I cover, in the event that the ship manager is targeted by the authorities, he should be able to look to the owner for funds to deal with fines or costs. However, owners are sometimes reluctant to deal with claims involving crew negligence or wilful default where the crew have been selected or are directly employed by the ship manager.

It is therefore extremely important that ship managers contract using BIMCO Shipman 98, or a contract which is very similar. If the managers have their own tailor-made contract, great care must be taken to make sure that all the necessary provisions are included. In particular, the contracts must contain clauses such as the following (taken from Shipman 98);

[Acts or omissions of the Crew]
Notwithstanding anything that may appear to the contrary in this Agreement, the Managers shall not be liable for any of the actions of the Crew, even if such actions are negligent, grossly negligent or wilful, except only to the extent that they are shown to have resulted from a failure by the Managers to discharge their obligations under sub-clause 3.1, in which case their liability shall be limited in accordance with the terms of this Clause 11.

Indemnity

Except to the extent and solely for the amount therein set out that the Managers would be liable under sub-clause 11.2, the Owners hereby undertake to keep the Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement and against and in respect of all costs, losses, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.

The ship manager who is facing direct action by the authorities may come under pressure from the owner to minimise losses by pleading guilty to the charges against him in order to reduce the fine; there may also be an agreement by the owner that the fine and costs will be paid by him. However, admitting responsibility has consequences for other ships under the same management. The management subsidiary of one owning company, who admitted liability, had to agree to implement a comprehensive compliance programme for 38 other ships under its management which called at US ports. Third party ship managers need to consider the interests of the owners of other ships under their management.

FURTHER GUIDELINES FOR THE RELEASE OF CARGO

– straight bills of lading re-visited

In the September 2003 edition of The Intermediary, the Club provided the answers to questions which had been posed by ITIC Members in respect of the ITIC GUIDELINES FOR THE RELEASE OF CARGOES 2003. One of those questions concerned the right of carriers (or their agents) to release cargo without taking in exchange a non-negotiable or "straight" bill of lading.

In the September 2003 article, the Club warned that releasing cargoes to named consignees under "straight" bills of lading without first obtaining the original bill of lading was an extremely dangerous practice and that agents should never do so without the principal's written instructions.

A recent claim has highlighted this point and the dilemma facing any agent. Even though his local law (or "custom of the trade" in his port) may allow release of the cargo covered by a "straight" bill of lading to the named consignee without first collecting the original bill of lading, it is not likely to be the local consignee (who, after all, has taken possession of the cargo) who has a claim against the carrier.

In 2002, a container of T-shirts was carried by a Japanese shipping line from Yantian Port, China to Haifa, Israel. The carrier had, at the request of the shipper, issued a straight bill of lading. The named consignee in Israel was unable to produce the original bill of lading, but did produce evidence that he had paid US$7,200, the invoice value of the cargo, to a bank in China. He also produced the shipper's invoice for US$7,200 and offered a letter of indemnity in that amount. The Israeli agent, as it was "custom of the trade" at that time in Israel to release to named consignees without taking the original straight bill of lading in exchange, accordingly released the cargo against the consignee's personal letter of indemnity for the invoice value of US$ 7,200. The agent did not obtain authority from his principal, the Japanese shipping line, to release in this way.

Several months later, the Chinese shipper of the T-shirts approached the Japanese shipping line to find out where his cargo was. The shipper still had all three original bills of lading in his possession. The carrier informed the shipper that the cargo had been delivered to the named consignee without collecting the original straight bill of lading, in accordance with custom of the trade in Israel and in accordance with Chinese law. Up to that time, there had been various decisions of the Chinese courts that straight bills of lading were not documents of title and that the responsibility of the carrier under the contract of carriage to deliver the cargo should be regarded as accomplished once the cargo had been delivered to the named consignee.

Although, the bill of lading was subject to Japanese law, the shipper lodged a claim for US$ 23,000 (which he alleged was the true invoice value of the cargo) at the Guangzhou Maritime Court. This court followed previous decisions and adjudged that the carrier had properly fulfilled his obligations under the contract of carriage by delivering to the named consignee. The shipper appealed to the Guangdong Higher People's Court, which reversed this decision, and found the carrier liable to pay the consignee US$ 23,000 plus interest and costs. Although, the Israeli consignee had paid US$ 7,200 to someone in China, there was no evidence that this amount had been paid to the shipper, nor did the court deem that it represented the full value of the cargo. The carrier then claimed reimbursement of US$ 59,000 from his agent in Israel, which represented the shipper's claim plus interest and costs, and the carrier's own legal costs.

This case is interesting in that it highlights the dangers for agents of looking only to their own law or custom when releasing cargo (or indeed in taking any other action which might affect the ocean carrier). The agent made two further mistakes. The first was to release the cargo without first obtaining his principal's written authority. The second was to accept a letter of indemnity which was not in the principal's recommended wording and was for an inadequate amount. Even if the invoice value had been US$ 7,200, as claimed by the consignee, rather than the US$ 23,000 claimed by the shipper, the amount of the letter of indemnity was insufficient to cover legal and other costs.

The laws of three countries governed the release of the container of T-shirts.

ISRAELI LAW

There is no law in Israel that allows the release of cargo covered by straight bills of lading without taking in exchange the original bill of lading. We are informed that, at the time of this incident, it was "custom of the trade", we are further informed that, following the decision of the English House of Lords on the "RAFAELA S" (see the article in September 2003 edition of The Intermediary), Israeli courts no longer recognise this custom.

CHINESE LAW

Chinese courts have, in the past, taken the view that, under the provisions of Article 79 (I) of the Chinese Maritime Code, a straight bill of lading is not a document of title. Therefore, unless the shipper has instructed otherwise prior to the delivery of the cargo, the carrier fulfils his responsibilities under the contact of carriage once he has delivered to the named consignee and it is not necessary to take in exchange the original bill of lading. This has been reflected in decisions taken by Chinese courts over a number of years. However, it is understood that senior judges representing the Chinese Supreme Court and maritime and higher courts (such as appeal courts) at the Thirteenth National Seminar on Maritime Adjudication, which took place in Quingdao in September 2004, came to the conclusion that, where the Maritime Code of People's Republic of China is applicable, delivery of cargo covered by straight bills of lading should only be against surrender of original bills of lading. This is reflected in the decision of the Guangdong Higher People's Court mentioned above.

JAPANESE LAW

The third law involved in this matter is Japanese Law. Although the Guangzhou Maritime Court seized itself of this matter, the shipper could equally have sued in Japan as the bill of lading provided for Japanese law. Article 573 of the Japanese Commercial Code states that, even in cases where a bill of lading has been made out in the name of a specified person, it can be transferred by endorsement, unless the bill of lading itself contains a provision forbidding endorsement. Therefore, and unlike other jurisdictions, a straight bill of lading is not necessarily non negotiable under Japanese law. The cargo must therefore be delivered against the production of a straight bill of lading, unless it is clearly stamped "non negotiable" on its face.

CONCLUSION

IT CAN BE SEEN FROM THE ABOVE THAT DELIVERY AGAINST STRAIGHT BILLS OF LADING, WHETHER STAMPED "NON NEGOTIABLE" OR NOT, IS A MINEFIELD. IT IS, HOWEVER, THE CARRIER'S MINEFIELD AND AGENTS SHOULD KEEP OUT OF DANGER BY NOT TAKING SUCH DECISIONS THEMSELVES BUT BY ASKING FOR THE PRINCIPAL'S INSTRUCTIONS AND AUTHORITY (IN WRITING).

Marine professionals

Overall limitations of liability

Marine professionals (surveyors, designers, naval architects etc) operating in any of the marine industries as independent contractors should endeavour to limit their exposure to claims by ensuring that their terms and conditions incorporate suitable limitations on their liability. This is so whether the work being done relates to luxury yachts, commercial ships or floating drilling and production equipment for use offshore in exploration and production activities and should be done irrespective of the scale and value of the specific project.

The incidence of claims being brought against marine professionals is on the increase. In particular projects involving the conversion or upgrading of a ship have become more involved and more complex. Delays and cost overruns have become commonplace with such projects over the years, with parties seeking to allocate responsibility for the consequences. Lack of front end preparation has been identified as the key cause of losses. As a result heavier reliance is now placed upon marine professionals with regard to suitability studies, surveys and design/scheduling at the beginning of the project.

What a marine professional is able to achieve by agreement with his client in limiting his liability will largely depend upon the market and, in particular, what the competition are offering. Rarely, however, will a marine professional be selected for work on the strength of his willingness to assume liability for his negligence!

As a starting point, it is clearly appropriate for a marine professional to limit his liability overall – he is essentially a provider of services and advice. He is not bearing the risk (or rewards) of the project; he has no equity interest. His financial interest is capped at the level of his potential or actual fees. Thus any liability he may assume for any losses arising from the services and advice provided should be limited to a sensible and reasonable amount in the circumstances.

Further, any overall limitation should be co-extensive with the scope of the entire services provided. It should extend to any services beyond the original scope of work whether or not contemplated at the time the contract is made. Otherwise, it may be said that the limitation applies only to the original scope of work and that any new or extra work performed has been undertaken without any such limitation applying.

This raises a practical consideration – marine professionals should not do additional work which is not within the scope of the contract without first ensuring that it is subject to the same terms and conditions as the original scope of work. An addendum to the contract does not merely act as a record of the scope and price for new work but, if correctly drafted, ensures that all of the limitations applying to the original work will apply to any new work. A common theme in claims is that the marine professional is asked to provide further advice and services that evolve from the initial scope of work – as the relationship with the client develops so the level of responsibility and extent of work grows; but this can give rise to an assertion being made later on that the professional ceased to act within the scope of the original contract and that he has assumed new responsibilities in contract or in tort without limit. It is important, therefore, to ensure that extra work or responsibilities are only assumed with written agreement as to the terms, including limitations. This ought to be second nature; and sensitivities over the maintenance of client relationships ought not to deter efforts to reach agreement on such matters.

Next, the amount of any overall limitation on liability ought not to be based upon the amount of insurance cover. Clearly, whether a marine professional can insure his risk in the market and the cost to him of any cover is a consideration in undertaking and pricing work; but this should not determine the amount of any limitation he agrees with his client. A marine professional should act as a prudent uninsured would act in negotiating terms.

The amount of any limitation will usually be a pre-agreed fixed sum (say 10% of the total price quoted for the work) or the amount of fees paid for the work. What is acceptable will depend on the circumstances. Classification societies tend to look to agree a cap of 10% of the contract price for their verification services. Designers tend to cap their liability at the fees paid to them, but there is no standard as such.

Finally, turning to the detailed drafting of such clauses, they are occasionally mistakenly prepared on the basis that they are designed to limit any liability for consequential or indirect losses. Such liabilities would routinely (and should in any event) be excluded by a suitable provision. An overall limitation clause acts independently to limit or cap any recourse against the marine professional for direct losses and damages for breach of contract or in negligence to an agreed figure. Direct losses are not narrowly confined and could exclude a claim for loss of profits and other costs that you extend well beyond the cost of merely obtaining alternative services or re-doing the work. It is therefore important that the clause is sufficiently widely drafted to encompass any claim or liability for direct or any other losses "howsoever arising" whether under the contract, in tort for negligence or otherwise. It is also recommended that express reference is made to any liability for breach of any statutory duty to the extent that the same may be limited.

A typical clause might provide as follows (but in all cases specific advice should be obtained):

> *"The aggregate liability of the Consultant to the Company for any matters arising under or in connection with this Agreement (however arising including for breach of contract, in tort, by reason of indemnification, breach of statutory duty, equity or any other legal theory) shall in no case exceed 10% of the Contract Price. This liability limit shall not apply to or be reduced by liability in the case of fraud, fraudulent misrepresentation and/or wilful misconduct."*

Our thanks for this article go to Ian Garrard and Clare Calnan Curtis Davis Garrard www.cdg.co.uk

MARITIME LIENS

There is a common misconception among ship agents that all disbursements incurred by a ship owner or a time charterer constitute a maritime lien which is automatically enforceable against the vessel that incurred the debt. A wonderful idea but wrong.

The law relating to maritime liens differs from country to country and more particularly from civil law jurisdictions such as France and Belgium to common law jurisdictions such as England, Gibraltar, Hong Kong and Singapore, in fact any jurisdiction which bases its law on the English model. In England and other common law jurisdictions, the term maritime lien applies only to seamen's wages, masters' wages, masters' disbursements and salvage. These are traditional maritime liens. Claims resulting from the supply of necessaries, bunker supplies, port services and towage etc. do not give rise to a maritime lien under English or other common law jurisdictions. It is commonly thought, that a mortgage constitutes a maritime lien under English law. However, this is not the case, although when it comes to the determination of priorities when a ship is sold by court auction, a mortgage is ranked higher than a ship agent's disbursement account.

What does constitute a maritime lien? In many civil law jurisdictions the following claims against the owner, demise charterer, manager or operator of the ship shall be secured by a maritime lien on the ship:

a) claims for wages and other sums due to the Master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

c) claims for reward for the salvage of the vessel;

d) claims for port, canal and other waterway dues and pilotage dues and it is of course this last item that ship agents are most concerned with. It should be noted that ship brokers' commission does not constitute a maritime lien.

The maritime liens as described above take priority over registered mortgages and charges. The importance of maritime liens is that they follow the ship, notwithstanding any change of ownership or flag, unless the ship has been sold by court auction. Maritime liens are usually extinguished after a period of one year unless, prior to the expiry of such period, the ship has been arrested or seized and such arrest or seizure leads to a forced sale. The one year period commences when the claims secured thereby arise. In France the maritime lien is extinguished after six months.

Some countries will enforce the maritime liens of another country even though the debts do not constitute a maritime lien in the country of arrest while other countries will use their own maritime lien criteria. Whether or not a maritime lien can be enforced against a ship which has been sold will depend largely upon which ports the ship calls at.

Once a maritime lien has been established it will take priority over registered mortgages and charges. Maritime liens usually rank in the order previously listed, provided, however, that maritime liens securing claims for reward for the salvage of the ship take priority over all other maritime liens.

The important thing for Members to remember is the fact that maritime liens are usually extinguished after one year and any delay in forwarding a claim to the Club could well mean that an arrest of the ship concerned would not be possible.

Maritime liens are usually extinguished after a period of one year unless, prior to the expiry of such period, the ship has been arrested or **seized** and such arrest or seizure leads to a forced sale.

ITIC FORUM 2004

It may only have been four years since the 2000 ITIC Forum, but it has been a busy four years. During that time not only has the Club's membership risen from 1,200 companies to 1,800, but premium income has also increased from US$19m to US$33m.

"I don't think we recognise fully the value of the information and our expertise when we compare ourselves with other 'professionals'.

ITIC's Forum 2004 proved to be a truly international affair, and reflected the true diversity of the Club's membership. The Forum was attended by over 270 Members, coming from all corners of the globe, including ship agents, ship brokers, ship managers, surveyors, consultants and other industry professionals.

Held at The Dorchester Hotel in London on 28-29 September, 2004, the opening day of the event was a general forum for everyone, under the ruthless chairmanship of John Guy. Paul Vogt, who has chaired ITIC since its formation in 1992, set the tone of the day saying that "the purpose of ITIC is to protect us from the consequences of our mistakes". Judging by the number of issues raised during the two-day event, it's not hard to see how and why mistakes do happen.

One of the most thought-provoking issues raised on the first day concerned money laundering. David Chopping, Technical Services Partner at accountancy firm Moore Stephens, gave a sobering presentation on the new money laundering rules that now apply to all transport industry intermediaries in the UK. Despite severe penalties being in place for those who fail to comply, only two members of the audience were even aware that their companies had money laundering compliance procedures in place.

Still on the subject of compliance, Per Christensen, Chief Executive Officer of Hudson Marine Management Inc, predicted that ISPS enforcement in both the USA and the EU would strengthen considerably over the next six months. "Expect to see over 170,000 US officials without much knowledge of shipping but with a lot of power to be engaged in this enforcement," he warned, and added "stop complaining about the legislation and get on with complying strictly with it."

Ugo Salerno, Chief Executive Officer of classification society RINA, also caused a stir by explaining how class is expanding into what he describes as "gaps in the market where industry wants service" such as coating supervision, which individual consultants and surveyors see as their areas of business. Although it did provoke a lively debate, Ugo was keen to point out that RINA had no intention of impinging on the territory of professionals already operating in that field.

One group of intermediaries who know only too well what it is like to have to defend their territory are ship agents. Simon Morse, Chief Executive Officer of Inchcape Shipping Services, spoke on day one on the future role of the agent. He struck a cord with much of the audience when he said that agents live and die by the speed and integrity of the information they provide. Not quite as many embraced his prediction of greater consolidation in the agency sector in the future.

Rounding off a day of lively debate, delegates were whisked off on buses for a tour of London followed by a cocktail reception and barbecue in the stunning setting of the Kensington Roof Gardens, the glamorous playground of Richard Branson's Virgin empire. A warm late summer's evening provided the ideal ambience for delegates to unwind, network, discuss the day's events with the Club's directors and managers and enjoy the (rather loud) sound of a Beatles tribute band.

Day two was divided into four separate forums with programmes aimed specifically at ship agents, ship brokers, ship managers, and surveyors and consultants.

The largest group of delegates attended the ship agency forum, which was chaired by Bjorn Engblom, Group Executive Chairman of GAC, and included wide ranging topics, including the ISPS Code, planning for divorce in agency agreements and a workshop where delegates had to consider the consequences of the issuance of switch bills of lading.

Scott Jones, President of General Steamship Agencies, tackled the thorny subject of whether a future exists for the independent liner agent. "My feeling is that there is a future for a handful of very nimble independents in the developed world" Scott said, and added "their future clearly lies only with the smaller carriers operating in "niche" or regional trades".

Bjorn Tonsberg, President and CEO of Barwil Agencies A/S, talked about the future of the port agent. His allocated topic was "Diversify or Die?" but, in Bjorn's view, the port agent has to "Add Value or Die". "Diversification isn't the answer. Stick to your core business but find ways and means of adding value to your customer base." Bjorn felt that "the old traditional port agent will slowly but surely die".

continued overleaf

The ship broking forum was also particularly well attended with presentations covering everything from loss prevention to derivatives. Sîan Heard, of Heard & Co Solicitors, gave a useful and enlightening presentation on the need for well-drafted employment contracts. "The balance between incentivising employees and protecting the business when a valued employee leaves is one of the most difficult challenges facing any competitive employer," said Sîan. "This is particularly the case in the ship broking world where the sharing of information and transparency is crucial."

Jeremy Biggs, a solicitor with Ince & Co, also offered some words of wisdom concerning the Contracts (Rights of Third Parties) Act 1999. The Act, which was first aired in the High Court in the landmark case of 2003, Nisshin v Cleaves, enables shipbrokers to bring a direct action against owners for brokerage. However, as Jeremy pointed out, owners are becoming more and more aware of the Act and exclusion clauses are starting to creep into contracts – something brokers should pay close attention to.

Given the raft of shipping compliance issues facing intermediaries today, Per Christensen of Hudson Marine Management Inc. gave a timely comparison of the use of consultants versus buying a compliance system off the shelf. According to Per, while there are some areas in which only a specialist consultant will do (such as port security assessments) adopting a do-it-yourself approach can help ensure that those using the system not only fully understand it but embrace it too.

Expert witnesses, claim notification and negligence took up much of the morning at the well-attended consultants' and surveyors' forum. Proving to be quite a highlight of the two-day event was the fascinating presentation on the salvage of the TRICOLOR given by Ivar Brynildsen of Wilhelmsen Insurance Services. This was hotly followed by a mock mediation of a professional negligence dispute. Expertly penned by ITIM's Mark Brattman (who had a cameo role) and narrated by Peregrine Massey, Chairman of ITIM, the starring roles went to Silas Taylor of solicitors AMJ, who played the mediator, Tony Payne, Managing Director of ITIM, who played the lawyer-loathing tank owner, and Ian Biles, of Maritime Services International, as the unfortunate tank surveyor.

Something else brokers should pay more attention to is their role in the industry, according to Alan Marsh, Managing Director of Braemar Seascope plc. "We ship brokers should always remember that we are the lubricating oil of the business. It is we who ensure that the market information is correctly and honestly distributed to the right people at the right time". But, according to Alan, ship brokers can sometimes give away their information too cheaply. "I don't think we recognise fully the value of the information and our expertise when we compare ourselves with other 'professionals'."

The ship management forum also offered much food for thought, particularly from Pradeep Chawla of Anglo-Eastern Ship Management Ltd, who called for ports to take much greater responsibility for security in the wake of the ISPS Code. According to Pradeep "seafarers have become the first line of defence in the fight against terrorism". "Is this the job of the seafarer?" he asked. "It is only a matter of time before a serious incident takes place because seafarers are too busy checking ID cards." Instead he called for the industry to put ports on the front line of defence and ease the burden on the crew.

This raised the interesting and little-debated point of whether dry dock facilities are covered by the ISPS Code. As they are often located outside the port with contractors coming and going all the time, do they not pose an even easier target for terrorists than ships in the port? asked one delegate – a question that remained unanswered.

The mediation followed a dispute between Tony and Ian. A tank, owned by Tony and inspected by Ian, had sprung a leak while full of oil. Tony, out of pocket to the tune of £450,000 for repairs, clean up costs and lost contracts, was now pursuing a claim against Ian for costs. Lively, entertaining, and often hilarious, not only did it give a very useful insight into how the mediation process works, it also provided delegates with some light relief after a long day.

The event came to a close with a sumptuous dinner at the Four Seasons Hotel just down the road. Guests were greeted with a glass of champagne and a £1,000 note. Sadly the money wasn't real but it did get the gambling off to a good start with the three roulette tables kept almost as busy as the champagne top-up staff. Once the guests had lost their fake £1,000 they were invited to gamble with their own money. The combined "winnings" of £300 were donated to the Save the Children Fund.

The entertainment continued with a lively pianist, a typical taxi driver's monologue from Fred Housego, and superb singing by Wendy Whalley of the ITIM accounts department. A relaxing evening was had by all and was a fitting end to another successful ITIC Forum.

For more information on this article see www.ITIC-forum.com

ITIM News

ITIM SPEAKERS OUT AND ABOUT

Every year the ITIM team are requested to speak at several events. Where our travel calendar allows, we are more happy to come along with one of our presentations. Here are a few of the events over 2005.

BIMCO CENTENARY GENERAL MEETING

Claims Director, Andrew Jamieson, was a guest speaker in Copengaen at the above event. He spoke on current ship agency claims and shared the platform with Niall Denholm, of Denholm Barwil Ltd. and Captain Matthias Imrecke of GAC Global Hub Services, Dubai.

IRISH MARITIME LAW ASSOCIATION

Andrew Jamieson gave a speech at the Irish Maritme Law Association's seminar on 14th April 2005. He spoke on the rights and liabilities of ship agents, marine surveyors and other maritime professionals.

MONTREAL

On 18th May 2005 Tony Payne, Managing Director of ITIM, was one of the speakers at a marine conference at The Faculty of Law of McGill University, Montreal. The conference dealt with "Contract Formation and Shipbrokers" and was jointly organised by The Law Faculty at McGill, the Canadian Maritime Law Association and the Association of Maritime Arbitrators of Canada. Tony was one of eight speakers, and his subject was "Some Pitfalls for the Unwary Broker".

ASSOCIATION OF SHIP BROKERS AND AGENTS

Zareena Hussain will be speaking at the ASBA Annual Cargo Conference, "What's on the Horizon?" in Miami on 6th October 2005. For more information on this conference see: *http://www.asba.org/cargoconf.cfm*

CHINA

The Club's claims consultant, Julia Mavropoulos, conducted a series of seminars for our Members in China in April 2005.

DANISH SHIPBROKERS ASSOCIATION

In association with the Danish Shipbrokers Association, Charlotte Kirk will be giving a presentation on the risks involved with bills of lading on 16th November. Any interested parties should contact Allan Houtved at the Danish Shipbrokers Association.

INSTITUTE OF CHARTERED SHIPBROKERS

Dubai Branch

Stuart Munro gave a bills of lading loss prevention presentation to the Dubai branch of the Institute of Chartered Shipbrokers in April 2005.

Ireland Branch

Alistair Mactavish will be providing a loss prevention seminar at the end of 2005 for the Members of the ICS in Ireland.

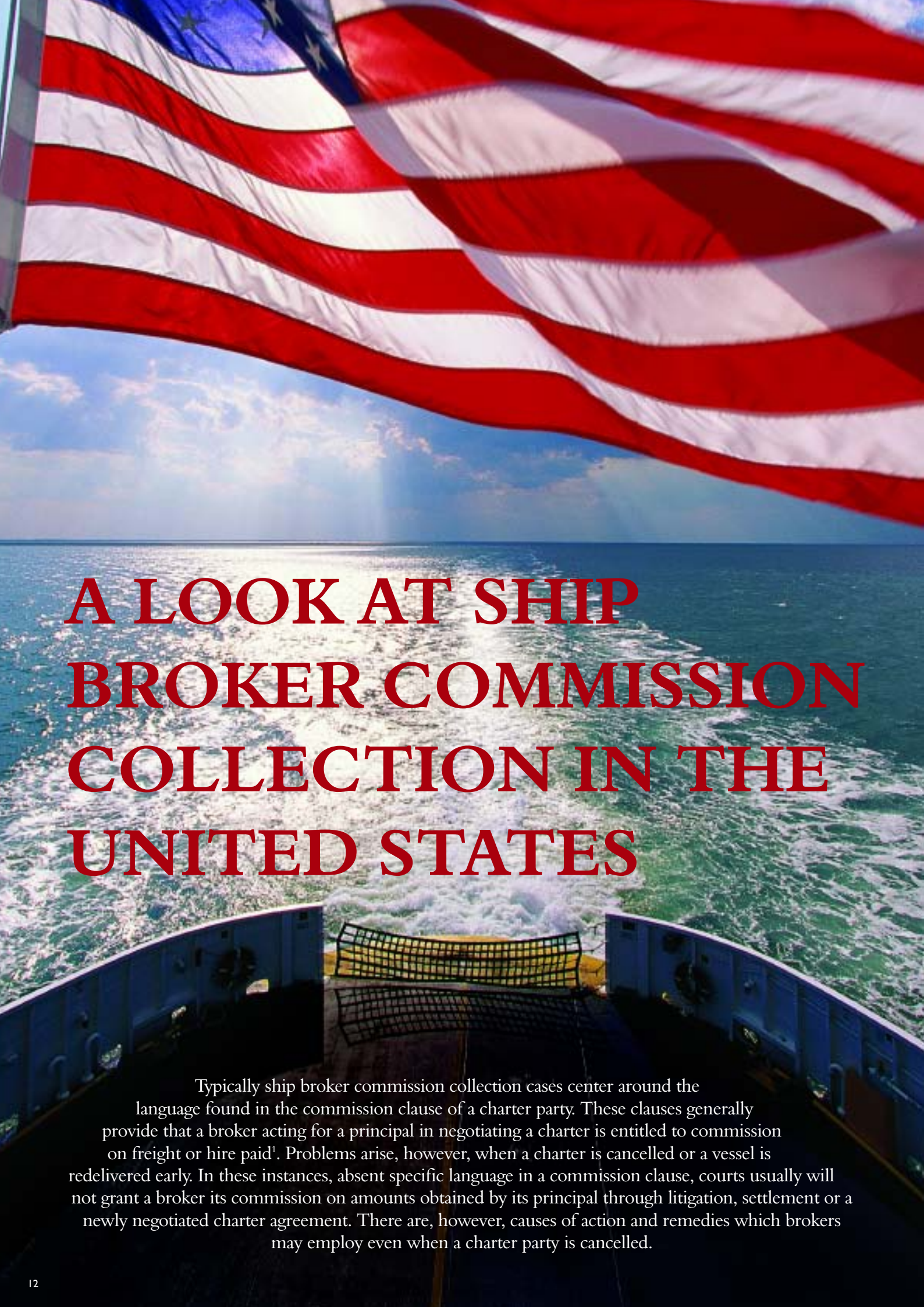
ITIC SAILING DAY – TRAFALGAR 200

In connection with the Trafalgar 200 events, ITIC arranged for a day's sailing on the Solent for some its Members.

We were joined by Peter French (British Maritime Technology Ltd), Peter Morton (SC Chambers & Co/ Charante), Kjell Tørseth (Wilhelmsen Insurance Services), Mike Brown (SSY) and Philip Codd (Burness Corlett). ITIC were represented by Charlotte Kirk, Zareena Hussain, Stuart Munro, Andrew Jamieson and Sven Jensen.

Fastnet 2005

Carrying on the sailing theme, ITIC' s underwriting director, Stuart Munro, completed his 10th Fastnet Race in August 2005, on a Farr 52 called Bear of Britain. The boat came third in Class Super Zero.



A LOOK AT SHIP BROKER COMMISSION COLLECTION IN THE UNITED STATES

Typically ship broker commission collection cases center around the language found in the commission clause of a charter party. These clauses generally provide that a broker acting for a principal in negotiating a charter is entitled to commission on freight or hire paid[1]. Problems arise, however, when a charter is cancelled or a vessel is redelivered early. In these instances, absent specific language in a commission clause, courts usually will not grant a broker its commission on amounts obtained by its principal through litigation, settlement or a newly negotiated charter agreement. There are, however, causes of action and remedies which brokers may employ even when a charter party is cancelled.

WHEN ARE COMMISSIONS EARNED?

In the United States, ship broker collection cases are not governed by maritime common law. As such, which claims and remedies are available to a broker are dictated by state law. Although there obviously are differences among the various state laws, certain principles are applied to these cases with a fair degree of uniformity. For example, under New York law, it is axiomatic that a broker is generally entitled to receive commissions when he brings a principal and a third-party together and there is a meeting of the minds on the essential terms of an agreement. Many jurisdictions in the United States have the same or a similar standard in some form or another. In shipping terms, the requisite threshold showing is that a charter party negotiation resulted in a fixture through the efforts of the broker.

As mentioned, the broker's claim for commission is based primarily on the commission clause contained in the relevant charter party. The express terms of these clauses are strictly interpreted and generally speaking there is little opportunity to find implied meanings in the commonly used charter party forms[2]. This principle is particularly meaningful to brokers who are denied a commission when one or both parties to the charter cancel, as it is commonly accepted that, absent a commission clause that allows a broker to collect some compensation upon a cancellation or breach, the broker is without remedy in such cases. There are circumstances, however, where the broker can seek relief other than by claiming for collection based on the terms of the commission clause. These alternative causes of action and remedies will usually be applicable when there is bad faith conduct by the principal or a third party or when other strong equitable considerations favor the broker's collection efforts.

ALTERNATIVE LEGAL THEORIES AND CIRCUMSTANCES

Equivalent performance

New York law recognizes a doctrine of "equivalent performance" that may aid brokers when a contract providing for a broker's commission is breached but the principal owing the commission is in the same or a better position than if the contract had been performed. This doctrine was articulated by a New York State appellate court deciding a ship broker commission case involving fairly common facts[3]. The disponent owner negotiated a twelve-month charter, with the aid of a broker, to a charterer who in turn sub-chartered the vessel for the exact same terms except that the hire rate was ten-percent more for the sub-charter. No broker was used to negotiate the sub-charter. After several months, the charterer was unable to pay hire to the disponent owner but, in order to mitigate, the charterer arranged for the sub-charterer to perform its obligations directly to the disponent owner. The charterer also continued to be responsible for its original obligation to the owner. The disponent owner argued that because the sub-charter was negotiated without a broker, no commissions were due. However the court found for the broker reasoning that the original charter party had been effectively performed since the substituted charter party gave the owner its full benefits.

Covenant of Good Faith

Brokers faced with cancellations of charters and who receive no solace from the plain language of the applicable commission clause may nevertheless have a remedy if there has been a breach of the implied covenant of good faith and fair dealing implicit in all contracts. Simply stated, the covenant prohibits either party to a contract from doing anything which will destroy or injure the other party's right to receive the benefit of the contract. It should be noted that the burden of proving that this covenant has been violated is difficult since the covenant does not add any rights or act to undermine a party's right to protect its own interest. For example, an owner acting in good faith who negotiates a settlement with a canceling charterer is not in violation of the covenant even though incidentally a broker is deprived of a commission by that act. If, however, the cancellation or subsequent mitigating conduct is intentionally done in order to deprive the broker of its commission, then the cause of action is supportable.

Third Party Beneficiary

Although it is commonly accepted that a broker may sustain a claim against a principal (usually the vessel owner) pursuant to a commission clause, there is some question as to the direct contractual nature of such a claim due to the fact that a ship brokerage commission clause is usually contained in a contract (charter) to which the broker is not a party. Many decades of maritime decisional law imply, however, that the brokerage commission agreement is separate and severable from the charter insofar as ship brokering claims have long been characterized as being based on an agreement for services preliminary to or leading to a maritime contract. Therefore, a ship broker suing for commission pursuant to a commission clause contained in a charter party nevertheless has a valid claim as a third-party beneficiary to the charter party. Under this theory, a broker need only show that the contract intended that the third-party broker receive a benefit (albeit incidental) from the performance of the charter.

Tortious Interference

Another theory of recovery that should be considered in a brokerage commission context, particularly in situations where it is anticipated that a charter party will be cancelled is a claim for tortious interference with contract. The elements of this cause of action are: (1) the existence of a valid contract between the claimant and a third-party[4]; (2) the interfering party's knowledge of the contract; (3) the intentional procurement of the third-party's breach without justification and, finally; (4) a breach and damages. It is critical in assessing the merits of this type of claim to determine whether the tortious conduct occurred before the charter party was actually terminated because the broker's contractual claim for commission would terminate then as well. As set forth above, one of the critical elements of the tort (the existence of a contract) would be missing. Practically speaking, a broker should be cognizant of interference, say by another broker, of a charter which may imminently be cancelled but has not yet formally been terminated.

Quantum Meruit

Finally, brokerage claims may be recoverable under the theory of quantum meruit. Quantum meruit is a quasi-contractual claim created by law in the absence of a specific agreement in order to prevent unjust enrichment of one party at the expense of another. It is usually pleaded in the alternative, to apply in the event that a plaintiff is unable to establish a contract claim against its principal. In essence, the broker is claming that through its efforts and expenditures the principal obtained a commercial opportunity and should thus compensate the broker for its efforts.

The above short review of claims and remedies available, but not always asserted by brokers, in certain types of commission cases is hopefully useful to brokers who feel they have been short-changed in collecting their commissions.

Our thanks for this article go to
Stephan Skoufalos
Skoufalos Llorca & Ziccardi LLP

[1] Under the commonly used NYPE form for time charters, commissions are due only on hire earned and paid. A number of charter party forms such as GENCON and BALTIME, however, contain specific clauses which provide for the broker to receive compensation in the event that the agreement is cancelled.

[2] If the commission clause in the charter party is ambiguous, a court may look to extrinsic evidence such as the custom and usage in the industry to determine if the brokerage commission should be paid.

[3] Kane v Neptune Shipping, Ltda 79 NYS 2d 396 (1st Dept.1948)

[4] The broker as discussed above is at a minimum usually a third-party beneficiary of the charter party.

BIMCO'S VIEW ON THE IMPORTANCE OF CO-ASSURANCE

BIMCO's attention has been drawn to the fact that some shipowners do not name third party ship managers as co-assured on their hull and machinery policies. This is a highly dangerous practice that may leave ship managers exposed to large claims from third parties for which they may be uninsured. Even large ship management companies who may accept not being named as co-assured on the owners' hull and machinery policies run a big commercial risk in doing so. In some cases it may simply be that the shipowners do not nominate the ship managers as co-assured because the managers have not requested them to do so. However, there may be other reasons for this practice, such as the shipowners avoiding the situation where they are unable to decide on a constructive total loss of a vessel without the acceptance of the managers.

Professional indemnity insurers, such as the ITIC, make it a condition of cover that their ship management members have to be co-assured due to the fact that ship managers in most jurisdictions will be deemed to be the ship operator. By being named on the hull and machinery and P&I policies, the ship manager is taking the same cover that has traditionally been available to ship owners performing in-house technical management of the ship. The insurers are not providing any extra cover by including the ship manager as a co-assured since the shipowner has only sub-contracted to a third party some of the functions he used to perform himself.

Ship managers need to be co-assured because the economics of ship management are based on a management fee structure that does not envisage the manager purchasing separate P&I and hull and machinery cover. The costs to the ship manager of obtaining separate insurance to cover his interests up to the full value of the ship (for hull risks) and for all liabilities that might possibly be passed to him (for P&I risks) are prohibitive and unnecessary - especially as this cover is available to the owners for no additional cost as part of the their standard marine insurances.

Whereas P&I insurers are used to naming the ship and crew manager as a full co-assured, there is sometimes initial opposition from hull underwriters, who want to resist expanding the cover to the ship manager as well. They would rather see the ship manager as a target for a claim from them in subrogation rather than as a co-assured. Such claims could of course expose the ship manager to liabilities far exceeding the value of the ship management company itself.

There are a number of examples where the importance of the ship managers being co-assured is evident. In one such case a managed ship entered dry-dock and was found to have suffered extensive engine damage. To protect the position of the ship manager, a Salvage Association surveyor was appointed to attend. The report subsequently issued appeared to confirm that the damage resulted from wear and tear and not from any negligent act on the part of the ship manager. Three years later the ship manager received a letter from lawyers acting on behalf of hull underwriters. The underwriters alleged that the poor condition of the ship, and the main engine, was evidence of the fact that the ship manager had failed to properly manage the ship in accordance with the standards required under the terms of the ship management agreement. The underwriters claimed damages of USD 500,000 under subrogation from the owners. Unfortunately the ship management agreement failed to make any provision for co-assurance and the ship manager was not co-assured. This claim is still in arbitration and has yet to be settled and has cost the ship managers involved a considerable amount of time and money.

Another example involved a managed ship that sank, after an explosion, outside a port area whilst having repairs to its engines. Three lives were lost. The ship manager was supervising the work and was an obvious target for the owners and their insurers. However, they were co-assured on all the owner's policies and were provided with assistance by the hull and P&I underwriters. Had they not been co-assured the managers would not have had any degree of protection and could potentially had been liable for death and bodily injury claims, salvage, wreck removal and other associated costs. The loss would have been considerably greater than the annual management fee.

Of particular note is a situation that might arise where the "Running Down Clause" (ITCH clause 8/ ICH 2002 clause 6) takes effect. In this situation, the managers may be sued by the other ship in tort. To the extent that this liability falls within the scope of the hull policy, the managers would be exposed/uninsured if ITIC or equivalent does not cover this risk. The advantage to owners, therefore, in making the managers co-assured is that it avoids their managers from being uninsured, which is of benefit in terms of continued management and operation of the ship.

In fact, hull underwriters are not taking on additional exposure in this way because the managers would still have the benefit of the indemnity in Shipman clause 11.3 which should enable them to claim back from owners (and therefore the hull insurers) if they do become liable. Co-assurance would, however, avoid the risk of a potentially costly series of indemnity actions.

In conclusion, it is worth recalling that the intention behind the drafting of Shipman was not to give owners, or their underwriters, an advantage over the position where the owners managed their own ships. Therefore ship managers' professional indemnity insurers make it a requirement for a ship manager to be co-assured, not to avoid claims for negligence against the ship manager, but importantly to protect the ship manager from claims that are rightly the responsibility of the owners. For this reason BIMCO strongly urges all shipowners, as a matter of routine practice, to ensure that their ship managers are named as co-assured on both their hull and P&I policies. BIMCO's Shipman 98 contains a provision (Clause 6 – Insurance Policies) which expressly requires the owners to name the ship managers as co-assured on their insurances. We recommend that all owners using this form ensure that this provision is maintained in all agreements.

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UNDER SHIP MANAGEMENT AGREEMENTS

Ship managers need to be co-assured because the economics of ship management are based on a management fee structure that does not envisage the manager purchasing separate P&I and hull and machinery cover.

80%

of all business communications are electronic

Approximately 80% of all business communications are electronic. Agents (which terms includes ship agents, ship brokers, ship managers and forwarding agents) will send many important documents by e-mail, including manifests, bills of lading, charter parties, recaps, tenders, pro formas, NORs, notices to master, demurrage statements and MOAs.

With the greater speed, convenience and informality of e-mail communication comes greater risks of errors. This article attempts to highlight the most common areas where mistakes can be made, and what can be done to avoid them.

USE OF E-MAIL BY AGENTS – RISK MANAGEMENT

Incorrectly signing off
Agents must make it clear when communicating with others that they are not contracting on their own behalf, but on behalf of a principal (whether the principal is named or not). As a Club, we have seen that, while agents have no difficulty in remembering to sign off other communications "as agents for XYZ Company", the informal nature of e-mail seems to inhibit agents from signing off properly. If you do not sign off as "agent only" and the third party has genuine reason to believe they are contracting directly with you (because the principal is undisclosed) you could be held liable for any losses that party incurs as a result of entering into the contract. Ship managers, who order numerous goods and services for ships under their management, and are often more substantial entities than the owners of the ships they manage, are particularly vulnerable.

Members who are usually careful to draw attention to the existence of their standard trading conditions by means of footnotes on their headed paper, faxes and invoices, do not always take the same precaution when sending e-mails. As more contracts are now completed by e-mail, ITIC is often faced with situations where it is difficult to prove that the Member's standard trading conditions were incorporated at the time the contract was made. The incorporation of standard trading conditions can make the difference between enjoying a limit of liability or facing unlimited liability.

Incorporate an automatic sign-off making agency status clear and incorporating standard trading conditions in every e-mail sent, although legally, the fact your terms and conditions are referred to may not in itself actually guarantee their incorporation into the contract.

Non receipt (or alleged non-receipt)
Apart from reliance on unknown ISPs, the internal system at either the sending or receiving end of the message could be down because of maintenance, repair or infection by a virus. This will not always produce a "fail" report.

An example of this occurred when a ship broker was instructed by his principal, the charterer, to confirm re-delivery of a ship to its owner. He sent the NOR to the owner's broker by e-mail, and requested an automatic "confirmation of receipt". The owner's broker received the message from the charterer's broker but, when he viewed it, it was blank. He assumed that it had been sent by mistake before it was ready. Meanwhile, the system had confirmed receipt to the charterer's broker, who assumed that the re-delivery notice had been received and accepted. The owner refused to accept re-delivery and a claim was made against the broker concerned.

Another problem occurs when a party denies having received an important e-mail. Unfortunately, there are occasions where the recipient of an e-mail denies its receipt because it is to his advantage to do so.

Send all important messages by both e-mail and fax. Have a crisis management plan in place for when your e-mail system fails and plan ahead for when you know there will be "down time".

E-mails to wrong party
It is very easy to make a mistake when addressing a message. ITIC received a claim involving the broker for a charterer who had invited tenders for a long-term time charter. The broker involved accidentally addressed his principal's bid to the entire mailing list. The principal's bid, therefore, became known to the competing owners. The principal did not secure the business and claimed his bid was undercut as a result of its publication round the market.

In another case of mis-addressing, the agent for a liner company quoted a "special" rate to a potential customer of the line who would bring a large amount of business. Unfortunately the special rate was mistakenly sent to an existing shipper, who then demanded the same preferential rate in order to keep his business with the liner company.

Check the address very carefully and make sure there are no erroneous ccs or bccs. Attach an automatic "confidentiality" notice to the foot of all e-mails, stating that the message is only intended for the named recipient and that the unintended recipient is prohibited from using or relying on the information contained in it.

Corruption
E-mails, when received, sometimes look very different from when sent, particularly where figures are concerned. This error has resulted in a large customs fine when the details of a cargo transferred from an e-mail to a bill of lading were found to be incorrect. The number of packages had been shown as the weight. The number of packages was 1,200, the weight was 18,000 kgs and the fine was US$35,000.

Insert a table into the e-mail when dealing with figures.

A shipbroker was negotiating the details of a fixture directly with two principals. The final clause on an offer ended in two separate paragraphs, each of two lines. When the broker forwarded the message, the system ignored the blank line between the paragraphs and forwarded it as a single paragraph of four lines. The recipient counter-offered on the basis that the last paragraph should be deleted. The counter-offer was accepted, but on the understanding that the "last paragraph" only referred to the last two lines.

Use numbered paragraphs.

Late opening
In order to meet a shipment deadline on a feeder service, cargo had to be booked by twelve noon. The agent to the feeder operator, however, went out to lunch without checking his e-mail messages until his return at 2 p.m. The booking had been received in time, but it was too late to make arrangements for the sailing. The deadline for providing details of cargo intended for US ports of 24 hours before it is loaded on the ship imposed by the US Customs in 2002 makes it even more important that e-mail bookings are regularly checked.

An e-mail from a shipper for a cargo covered by a sea waybill was forwarded by the loadport agent to the personal e-mail address of the import clerk in the discharge port agent's office. The shipper had not been paid as promised, and was exercising his right to stop delivery of the cargo. Unfortunately the import clerk had left the office through sudden illness, and by the time she returned to her desk the cargo had been delivered.

Have more than one person monitor all incoming e-mails, either by routing all messages to a central mailbox or by having a system in place where personal e-mail boxes are automatically monitored during planned and unplanned absences. Do not leave personal e-mail boxes on the system for people who are no longer employed. You will be held liable if a deadline is missed.

Re-use of previous e-mails
It is common, when producing charter parties to use previous clauses or even entire charter parties "with logical amendments". However, by using "old" e-mails there is a risk that mistakes can occur.

An example of this occurred when a fixture was made incorporating special terms for the "South bound" journey only. The charterer's broker used a previous clause which included the special terms for the "North bound" journey as well. When the owner claimed the additional hire, the charterer declined to pay until the terms of the charter party were brought to their attention. A claim was then made against the charterer's broker.

It is vital to ensure that all databases, templates and other documents or clauses you may wish to re-use are continually updated and checked thoroughly before being sent.

Libel
Some of the biggest names in British business have been found guilty of libel as a result of comments made by their staff in internal and external e-mails. Both British Gas and Norwich Union Life Insurance have had to pay substantial damages to competitors because of defamatory remarks made by employees in e-mails.

Companies are vicariously liable for statements made by their employees. Therefore it is important that the employer has an e-mail policy which all the employees are made aware of and abide by. An exclusion clause stating that the views expressed in the e-mail are those of the individual sender and not the company's may assist in some cases.

Conclusion
We must all strive to manage e-mail in a responsible and businesslike manner. Most of the problems set out in this article could have been avoided by putting in fairly simple safety systems. Above all, despite their informality, it is of the utmost importance to always think of emails as proper business communications.

THE ISPS CODE AND INTERMEDIARIES

On 1 July, 2004 the International Ship and Port Facility (ISPS) Code came into force. Although, as predicted, ships have been subjected to delays, detentions, inspections and increased costs, there has not, as was feared, been a widespread disruption to world shipping. Although intermediaries, such as ship agents and ship brokers, have no direct involvement in the implementation of the Code, they do have an important role to play.

SHIP AGENTS

Ship agents are the link between the ship and the port facility. When a ship calls at a port facility for the first time since the implementation of the ISPS Code, the Master has no way of knowing what pre arrival security information is required, when he needs to send it and to whom it should be sent. Unfortunately, there does not appear to be a harmonisation of pre arrival security information and requirements vary from port to port and country to country so it is not possible for the ship to have a pro forma document which can simply be forwarded to the port agent or to the designated authority at every port called at. It is understood that the IMO intends to introduce a standard Ship Pre-arrival Security Information Form, which is currently in draft, which should eventually simplify the provision of information for all concerned. In the meantime, most port facilities have their own electronic "form" to be filled in by the ship, which contains fields for all the required information.

At the current time, therefore, the master relies on the port agent to notify (a) the pre arrival security information required by the port, (b) where the information needs to be sent (eg. via the agent or direct to the terminal/port authority, customs, coast guard, etc) and (c) the time scale in which it needs to be provided (in some countries it is 24 hours before arrival of the ship at the port, in others it is 96 hours). Failure by the ship to provide this information within the time period allowed can result in fines, detention of the ship and even refusal by the port facility to allow the ship in at all.

ITIC has seen several claims against port agents for failing to ensure that the message to the master setting out the port's requirements got through to him, or failing to pass on the information to the relevant authority. In one case, an agent sent a telex to the master setting out the requirements of the port, but the master allegedly never received the telex. The ship was kept outside the port until the 96 hour notice period had expired. In another case, a bulk carrier was delayed for three days. The port agent had passed on the information to the coast guard, but mistakenly used an old e-mail address, even though he had been notified of the new e-mail. The old e-mail address was no longer functioning, but unfortunately there was no "message failure" report. In a buoyant market, the charterer's claim for lost hire was US$55,000 per day (US$165,000).

In some jurisdictions, legislation or port statutes have been passed which make the agent jointly and severally liable for fines resulting from breaches of regulations relating to the ISPS Code. In a circular issued by the Maritime and Port Authority of Singapore, it is stated that *"the owner, **agent** and master of a ship which does not comply with the requirements of the …. ISPS Code…. shall be guilty of an offence.. which is punishable upon conviction with a fine not exceeding $10,000"*. The Maritime Transportation Security Act (MTSA) 2002 (the American equivalent of the ISPS Code) provides that *"the owner, **agent**, master, operator or person in charge of a vessel … is responsible for compliance"*.

This allows the US Coast Guard to fine the local agent when a ship fails to send the electronic Notice of Arrival (e-NOA) with full and correct details of crew, passengers and cargo to the National Vessel Movement Center (NVMC) 96 hours prior to the arrival of the ship at a US port. One claim involved a fine of US$32,500 imposed on a US ship agent because the master of a ship, having provided the e-NOA to the NVMC for the call of his ship at one US port, failed to send an e-NOA to the NVMC for the call at a second US port. The ship had already sailed when the fine was imposed, and the fine was therefore issued in the name of the ship agent. The owner is refusing to deal with the fine on the agent as he alleges that the agent was at fault in failing to instruct the master to send a second e-NOA in respect of the call at the second port.

Although most legislation provides that the ship should lodge the information directly, in most countries it is too soon for there to be a "custom of the trade" with regard to whether the ship or the local agent should electronically register the pre-arrival security information with the designated authority. In some countries the ship is instructed by the port agent to send information electronically direct to the designated authority. One reason for this is that, if the information is sent via the agent, there could be delays in passing on information received by the agent outside working hours, and if the information is received, for example, by telex rather than an e-mail in the required format and has to be transcribed, errors could result. In addition, if the information is incorrect or incomplete (or even if the information is in a format which the designated authority cannot open) the agent could be exposed unnecessarily to claims from the ship for delays. However, in many ports/terminals all information is transmitted via the agent, who then passes it onto the designated authority. The agent sometimes charges an extra fee for this. In such cases, the agent must make it clear that he does not accept responsibility for the accuracy or completeness of the information provided by the ship. The agent's job is to provide the ship with details of the information required by the port facility, and to pass on the information provided by the ship to the designated authority. It is not the agent's job to check the information for accuracy and completeness.

We have had a number of enquiries from ship agent Members in the United States in relation to the implementation of the e-NOA/D from 6 June 2005. We have drafted the following disclaimer wording which we would recommend is sent to principals by the ship agent when asked to perform the filing on their behalf.:

(Agent) will exercise reasonable skill and care to file the data correctly and within the prescribed filing deadlines. However, it must be noted that (Agent) cannot accept any responsibility or liability for the correctness and accuracy of the information provided by the vessel owner/master/crew /operator. The same is true if the data is not received in a timely manner from the vessel owner/master/crew/operator, resulting from technical problems or human error beyond our control. (Agent) can provide the filing process as a data exchange service only. Any liabilities, whether or not (Agent) was or is claimed to have been negligent or at fault in any way resulting from the filing, rests with the vessel owner/master/operator/crew. Based on the above, vessel owner/operator/master/crew requesting (Agent) to provide this filing do so at their own risk and shall protect, defend, indemnify and hold (Agent) harmless from and against any and all claims arising as a result.

It is the duty of any agent to perform his duties with the degree of skill and care that someone in the same position should possess. If they fail in this duty then they would be responsible for any loss caused. However, ITIC has already seen attempts by principals to transfer liability contractually to their agents for delays, costs, and losses suffered by the principals due to failures by parties other than the agent in the implementation of the ISPS Code. We suggest that the agent rejects any demand from a principal that he sign an agency agreement containing such a provision.

CHARTERING BROKERS

Both time charters and voyage charters entered into after 1st July, 2004 will contain clauses which address the ISPS Code. The Baltic and International Maritime Council (BIMCO) has published ISPS clauses for both voyage and time charter parties, which in essence provide that all delays, costs or expenses which result from the ship not being ISPS compliant will be for the owners' account. Delays, costs or expenses which result from the port facility not being ISPS compliant will be for charterers' account, unless caused by the owners' negligence. There is also a separate "US Security Clause for Voyage Chartering" involving calls at ports in the United States. It is strongly recommended that brokers familiarise themselves with these clauses which can be found on BIMCO's website at: **http://www.bimco.bk**. Intertanko has also produced a clause for time charters, and the Club has also been informed that some major charterers such as Cargill and ExxonMobil, are formulating their own clauses. In such cases it is important that the broker brings their usage to the attention of his principal(s).

THE END OF AN ERA

After almost thirty years in the business, ITIC's Claims Director, Julia Mavropoulos, has retired.

On the last day of 2004, Julia Mavropoulos, Claims Director of ITIC for the past eleven years, retired.

Julia has been involved in the shipping industry since the early 1970s, has been an underwriter and claims handler for ITIC since the mid 1980s, and has been in charge of ITIC's claims since 1993.

If you ask Julia how she became involved in the shipping industry she will tell you that she 'fell' into it by mistake. Julia was married to a port captain for a Greek shipowner, based in India and Bangladesh, and found herself spending time on and off ships, coming into contact with local ship agents and generally became immersed in, and fascinated by, shipping life.

Julia then moved to Piraeus in the 1970s, where she worked for a company who were both the General Correspondents for the UK P&I Club and Lloyd's Agent for Greece. The fascination with shipping and shipping claims continued and when Julia returned to London she was offered a position with the management company of TIM, one of the predecessors of ITIC, and the rest, as they say, is history.

According to Julia, the good thing about a job with ITIC is the opportunity to meet people from all over the world, and the sheer variety of the work. In addition to her Claims Director function, Julia has also had the opportunity to act as an account executive, which means marketing and underwriting as well as handling claims for a particular part of the world. In the past Julia has had the opportunity to visit many countries in her account executive role, and will always have fond memories of the generous hospitality afforded to her by Members throughout the world.

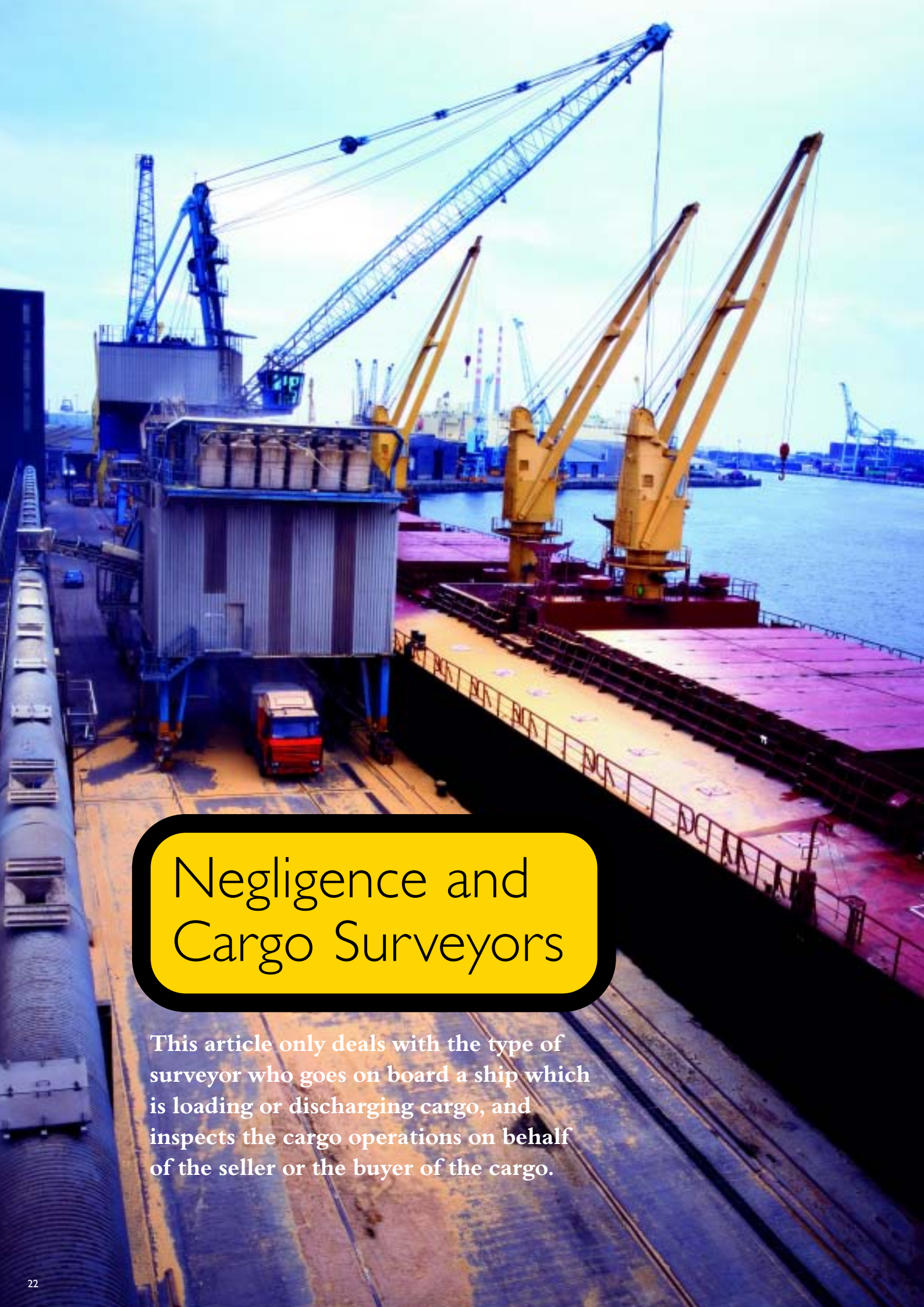
Julia became the ITIC expert on ship agency matters, and regularly spoke at conferences around the world. She has been a regular contributor to ITIC's publications, the Intermediary and The Claims Review, and is also responsible for most of ITIC's circulars on ship agency. One of the most important parts of her job was to keep abreast of developments worldwide that may have an impact on agents and to advise Members. The most recent development is the ISPS Code. Athough the role of the agent is not mentioned, the ISPS Code places an extra burden on them for no additional financial reward. However, if the agents get it wrong there will be blame and claims.

Although the demanding Claims Director role meant that Julia had to restrict her account executive activities, until she retired she maintained her connection to the North West of England (she is a native of Lancashire) and India, a country she first visited in 1973 and intends to continue to visit after her retirement.

"Working for ITIC has been a great experience for me" Julia says. "It has given me an opportunity to make friends around the world, and to assist Members with their problems. It is wonderful to be part of ITIC's dedicated team, and I am happy that "my" Members are in good hands now that I have retired".

With clients around the world, travelling became an integral part of the job for Julia, and she intends to do far more travelling now that she has retired. Although her main aim is to have a long and happy retirement, she has plenty of interests to keep her busy.

That's not to say she will be leaving shipping circles completely as Julia has maintained her links with ITIC. "I have been with ITIC since the beginning, as have several of my colleagues. I am very proud of what we have achieved in making ITIC the world leader it is." Julia now acts as as a part time consultant to ITIC and will continue to do so for the foreseeable future.



Negligence and Cargo Surveyors

This article only deals with the type of surveyor who goes on board a ship which is loading or discharging cargo, and inspects the cargo operations on behalf of the seller or the buyer of the cargo.

The difference between contractual claims and claims for negligence or misrepresentation/fraud.

It is worth clarifying how a negligence claim differs from a contractual claim or a claim for fraud. A contractual claim arises when two parties have a contract, one party breaches the contract and the other party suffers losses as a result. So, any dispute that arises between the surveyor and his customer (that is, the party who engaged him to carry out the inspection) is a contractual dispute and may give rise to a contractual claim.

A negligence claim is different. Although the surveyor is engaged by one party, the fact is that other parties such as buyers and banks may rely on the accuracy of the certificates that he issues. In those circumstances the surveyor assumes responsibility toward those third parties, even though there may have been no direct contact at all between them. If the surveyor does not perform his tasks with the appropriate standard of care and the third party suffers loss as a result, then that third party may be able to claim for the loss suffered.

One type of negligence is misrepresentation.
A misrepresentation claim arises where one party makes a false statement of fact to another party, knowing that the other party will act in reliance on the statement. That other party does rely on the statement (thinking it to be true) and a loss results. Broadly speaking, if a false statement is made in a report, but the surveyor honestly believes at the time that it is accurate, then this is treated as negligence. However, if a false statement is made where the surveyor either **knows** that it is false or **suspects** that it may be false, then this is fraud. This distinction between negligence and fraud is critical because most professional negligence insurance policies will not cover fraud and higher damages will be awarded against a party for fraud than would be awarded against them for negligence.

It should be noted that if surveyors are involved in arbitration or litigation under English law, an arbitrator or judge can order them to disclose all their files relating to their work on the cargo. This includes internal correspondence and correspondence with the customer and also e-mails. Surveyors should therefore be extremely careful what they put in writing. A message containing loose language or a flippant comment about a situation can be very damaging in the context of a claim for either negligence or fraud.

We will now look at two scenarios where one of the parties involved in the shipping of the cargo breached its obligations in some way, but the surveyor became the centre of attention for failing to pick it up.

SCENARIO ONE

Negligence claim arising out of false documents issued by other parties

In the first scenario a surveyor is involved in a transaction where falsified documents are issued and the surveyor fails to pick it up.

Niru are an Iranian battery manufacturer who in 1998 bought 10,400mt of lead C&F Bandar Abbas at a total cost of about US$ 5.8million. Payment was to be made by Letter of Credit (L/C) against a multimodal bill of lading and a certificate to be issued by a named surveyor, certifying that the quality and packing of the goods loaded complied with the specification in the invoice and the L/C.

To perform the sale the seller bought a consignment of lead that was in a warehouse in Sweden. The bank which financed that purchase did so on the basis that it would hold the warehouse warrants as security pending reimbursement of the price through the L/C. This presented a problem. As long as the warrants were sitting in the seller's bank, the lead could not be released for loading and documents could not be presented under the L/C and the buyer's bank would not pay for the lead.

To get around this, the seller first asked the surveyor to do his quality inspection of the lead while it was still in the warehouse, which the surveyor duly did. These inspections revealed that the lead complied with the contract. The seller then instructed its freight forwarder to issue a multimodal bill of lading stating that the lead had been taken into its charge for carriage to Iran.

The surveyor was sent the false bill of lading. Not realising that this document was false, the surveyor agreed to issue a certificate confirming how the lead was marked and stating that the goods "loaded" conformed with the contract. The documents were presented.

The plan was that, as soon as the payment was made to the seller's bank, they would release the warrants and shipment would indeed be made as per the bill of lading. However, the buyer's bank did not pay out straight away because it could not get the currency together. While payment was delayed the whole deal unravelled. The market dropped, the seller's bank became worried about its loan and sold the warrants to realise its security thinking that the whole deal had been called off. Unfortunately the buyer's bank was not told that the deal was supposed to be off and it eventually paid the seller's bank for the documents. The seller's bank at that point should have returned the funds to the buyer's bank, but it paid the funds out to the seller. It will come as no surprise to hear that the seller and the freight forwarder then disappeared. The buyer, Niru, lost the US$ 5.8 million which its bank had paid out for worthless documents.

Up until two years ago if you were dealing with negligence and cargo surveyors you would have said that there was no clear legal precedent. The only cases ever cited were about classification society surveyors and they were decided on reasoning which probably would not apply to cargo surveyors. However, that

has now changed. The events just described came to court; the buyer's bank and the buyer jointly came after the seller's bank and the surveyors for the US$ 5.8m. The claim against the surveyors was for negligence because the surveyors had issued a certificate saying that the goods had been loaded and marked in a certain way, without making sure that they were in fact loaded and marked.

The surveyors said, in their defence, that they were asked to verify the quality of the lead and so their role was to guard against shipment of inferior goods. It was not their role to confirm that the goods had been shipped or to make sure that the bill of lading was honest. They said that the bank had relied on the bill of lading for confirmation of shipment, not on their certificate. They pointed out that there had been no direct contact at all between themselves and the buyer or the buyer's bank.

The judge found the surveyors to be negligent. He said:

Although a certificate of this kind does contain important statements about the characteristics of the goods, its primary importance lies in the very fact that it has been issued. The buyer does not so much rely on what the certificate says about the goods - after all he knows that if it did not state that the goods conformed to the contract, it would not have been tendered at all – as upon the fact that the certificate has been issued. Possession of a certificate covering the required matters, together with the other documents called for by the contract, enables the seller to demand payment. .... This is just as much true if the surveyor is required to certify that the goods have been loaded as it is if he is required to certify that they are of contractual origin or quality.

Inspection companies such as .... are instructed in connection with documentary sales precisely because they are understood to have the necessary facilities and expertise to enable them to determine whether the seller has performed his contract in the relevant respect and are trusted to exercise independent judgment. Although an inspection company may receive its instructions from the seller, it will be aware that its certificate is likely to be required for presentation to the buyer or a bank as part of the documents against which payment is to be made. It is aware, therefore, that the buyer, or a bank which ultimately has recourse to the buyer, will rely on the existence and accuracy of its certificate in paying the price of the goods. ... In my judgment it is inherent in the nature of the task undertaken by the inspection company that it assumes responsibility to the buyer for what is stated in its certificate that, after all, is the whole purpose of its employment.

In this case, in theory, the loss is going to be shared between the surveyors and the seller's bank. But potentially surveyors can find themselves facing a claim for the entire loss resulting from a fraud, when they themselves have not been fraudulent at all, only negligent. What it comes down to is the fact that the surveyor's role, often, is not just to certify quality and quantity, but to guard against fraud on the part of another party. This is when the independence of the surveyor comes under scrutiny.

SCENARIO TWO

Negligent inspection of cargo holds prior to loading

In the first scenario, the buyer has lost out because the seller's surveyor had failed to pick up the seller's fraud or breach of contract. What happens if a buyer wants to make a claim but the buyer's own surveyor has failed to pick up the breach?

A ship was chartered to collect a series of edible oil cargoes from the straits of Malacca for carriage to Rotterdam and Hamburg. Part of the agreement was that the ship would only load the oil into tanks which had previously carried a cargo from the list of 'acceptable previous cargoes' which was used almost universally by the edible oil trade. The ship arrived in a Far Eastern port to load the vegoil late on a Saturday night. The surveyor who was attending for the purposes of the sale contracts was asked to check and pass the tanks. The ship's log showed that the tanks in which the cargo was going to be loaded had previously carried gasoil, which was not on the 'acceptable' list. After some discussions, the surveyor passed the tank for loading. By the time the mistake was discovered large volumes of oil were on their way to Europe, which were unsellable because they had been shipped in tanks that had previously carried gasoil.

This problem arose because:

a) the owner and the surveyor were both unclear about the extent of the cargo surveyor's authority. Had it been clear that the surveyor was only attending to document operations for the sale contract, the owner may have been more cautious about loading cargo without reference to the charterer;

b) the cargo surveyor was not sufficiently familiar with the edible oil trade requirements to know that gasoil was not an acceptable previous cargo. He also did not speak good English and, when the master argued that gasoil was acceptable even though it didn't appear on the list of acceptable cargoes, he got confused.

In the ensuing arbitration, the owner said that the damages claim should fail because the buyer's own surveyor had passed the tanks for loading. This argument failed. The arbitrators found that the surveyor did not have sufficient authority to waive the buyer's rights under the charter party and that the owner's obligation to provide a fit ship was not in any way diluted by a surveyor mistakenly passing the tanks.

How does this fit with the Niru Battery case where the surveyor was found liable? The answer is in the chain of causation. In the Niru case the seller and the forwarder colluded to produce false certificates. The surveyor produced certificates which were inaccurate because he did not check the facts and the bank then relied on those certificates and paid out the money – and that is when the loss was incurred. The judge said that the issue of those inaccurate certificates was an 'effective cause' of the loss.

In the cargo contamination case, the ship contaminated the cargo, then the surveyor afterwards made a particular decision. The cause of the loss in those cases was the ship contaminating the cargo, not the decision of the surveyor afterwards. So the issue of causation is really important and it is particularly important where the problem has arisen with the ship, because under the Hague Rules there is a provision that says that the carrier and ship are not responsible for losses arising from the acts or omissions of the shipper or cargo owners or their agent. So, if the ship can show that the loss arose from the act of the surveyor, then again the ship will be able to escape liability. Yet again, if the ship escapes liability then the loss may fall on the surveyor.

The issuance of documents is therefore an absolutely critical part of the surveyor's task. It is not more important than attending the ship and doing all the right things there, but from the liability point of view, a surveyor is far more likely to be sued for inaccurate documents than for not performing tasks properly on the ship because it is the documents that are relied on when large sums of money are paid out.

In the vegoil case the surveyor issued certificates that clearly stated that the last cargo was gasoil, so there was no misrepresentation, and so a claim against the surveyor would probably never have succeeded.

The standard that is expected/knowledge that a surveyor is expected to have

It is really important for the surveyor to be clearly briefed by his customer as to what tasks need to be done and how they are to be done. That is all well and good, but isn't the customer entitled to assume that the surveyor will have a certain amount of knowledge already? Yes he is.

In the Niru battery case the judge said that the surveying company had been appointed because it had an office in Iran and so understood what was required by the Iranian banking authorities in terms of documents and wording. So, in addition to understanding how international documentary sales work, a surveyor should be familiar with regulatory requirements that apply to the country in which the surveyor offers his services.

Is the surveyor expected to know who all the parties are and how they interlink for every cargo that he inspects ? No, in the Niru Battery case the surveyor was liable to the buyer even though there had been no direct contact at all between them. But a surveyor should have an understanding of the industry or trade in which he operates. If the surveyor advertises membership to bodies such as the IFIA or is ISO accredited then it is to be expected that the surveyor will abide by any codes of practice issued by those bodies.

If the surveyor's marketing materials state that all surveys are carried out by highly trained, experienced specialists, then the parties relying on his documents are entitled to assume that the survey has been carried out by a highly trained, experienced specialist. Negligence is about measuring someone's performance against the standard that is reasonable in the circumstances. For this reason there is a link between the promises made when a new client is taken on, and the surveyor's exposure to claims. The surveyor should be aware that the way that he projects himself can have the effect of raising the standard against which his performance will be measured should a problem arise.

The above is an abridged version of a presentation given by Annabelle Panesar, Solicitor, Richards Butler at the ITIC Forum 2004

ITIC News

PROPOSED NEW SHIPPING ACT IN SPAIN

Carlos Perez, a partner in a leading shipping firm in Madrid, advises that, although Spain's shipping legislation has remained largely unchanged since 1885, in early 2005, the Ministry of Justice in Madrid presented a proposed pre-draft of a new Shipping Act. This Act introduces not only new rules on matters such as oil pollution (in the light of the PRESTIGE incident) but also tries to resolve recurring problems in Spanish shipping law. One of these concerns the liability of ship agents for cargo claims. Spanish law has lacked consistency on this issue and ship agents have either been found liable, or released from liability, for cargo claims at different times in the past. The pre-draft intends to resolve this problem by providing that ship agents will not be liable for cargo loss, damage or delay, unless caused by their own fault. The Ministry intends to send the pre-draft to Parliament in the Autumn of 2005 for discussion, and aims to have the new Act passed before the next Spanish general election. We will keep Members up-dated on developments.

Circular on switch bills of lading

As a result of a spate of very large claims against ship agents by banks, ship owners and shippers, resulting from the issuance of a second set of bills of lading without retrieving the first set, the Club issued a warning circular in 2004 headed "Issuance of Switch Bills of Lading". The circular is available on the Club's website.

Money Laundering Seminar

ITIC hosted a seminar for London ship brokers in January 2005 on the issue of Money Laundering Regulations. The speakers were Andrew Ottley and Paul Herring, both of whom are partners in Ince & Co.

Standard Terms for Surveyors and Consultants

Intermediary 2001 contained an extensive article by Dominic Ward of AMJ on the benefits for marine surveyors and consultants of the use of standard terms and conditions. Following consultation with a number of industry bodies, ITIC produced a set of draft clauses for members to consider using. Both the article and the terms are available in the publications section of www.itic-insure.com.

www.itic-insure.com

The ITIC website will be changing in the Autumn. Although the content will be largely the same, it will be easier to access and navigate.

There will be two new sections, "Reporting a claim to ITIC" and "Electronic information service". The reporting a claim area will guide Members and their insurance brokers through what to do in the event of a claim.

The electronic information service will provide a form to complete, to allow you register for online information updates. This has been constructed to allow us to forward more of our information to a wider group of Members as quickly as possible.

Illegal immigrants posing as crew

The problem of illegal immigrant smugglers trying to involve ship agents by pretending that the illegal immigrants are crew members joining ships continues. Any Member who needs more information on this should refer to the Club's website. To date, more than 120 incidents have been notified to the Club, although we are pleased to advise that none of the ship agent Members of ITIC have been mis-led recently and we hope that this is due, in no small measure, to the Club continuing to flag this danger.

Ship agents should therefore not relax their guard. Most of the cases reported to the Club in the past year are fairly unremarkable, but one unusual case involved an agent in Spain. A Bangladeshi shipping company asked the agent to arrange a crew change on one of their ships. Surprisingly, shortly after informing ITIC of this suspicious case, the agent received another message from Bangladesh, from a party describing themselves as "ITIC Bangladesh", warning the agent that the crews were illegal immigrants. Alarmingly, this unidentified party also claimed that the crew members were "fanatic islamic militants". ITIC does not, of course, have an office in Bangladesh and we believe that this unsolicited warning to the ship agent may have been the result of a dispute between crew smuggling gangs. We would ask our Members to continue to send reports of these smuggling cases to us so that we can continue to monitor them.

Circular on demurrage time bars

There is an increasing tendency for principals to adopt a policy for demurrage claims to be sent electronically. This move to e-mail will save courier costs but is not without pitfalls. As you will read elsewhere in this publication, email can be unreliable and the Club will be issuing a circular in September giving advice and loss prevention information on this subject. The circular will be available on the Club's website: www.itic-insure.com.

ITIC BOARD OF DIRECTORS

The Club has announced the retirement of Erik Nes from its Board. Mr. Nes retired at the meeting in London in March 2005 after 10 years as a Director of ITIC. He was presented with an inscribed fountain pen by the Club's new Chairman, Mr. Harry Gilbert. Mr. Nes had been with the Wilhelmsen Group since the late '60s and was President of Barwil A/S from 1990 to 2005.

Message from Paul Vogt

ITIC CHAIRMAN 1992 TO 2004

It has been a great privilege to have been the Chairman of ITIC since the merger of CISBACLUB and TIM in 1992.

The Club has grown considerably during this period, thanks mainly to the professionalism and expertise of the Managers who continue to offer outstanding service to Members in need. We all live in an increasingly litigious world and it is a great comfort for us, as Members, to have the protection of ITIC behind us.

It is particularly pleasing that the cost of membership has remained stable over the last few years (in a climate of steeply increasing insurance costs) and also that the reserves of the Club are extremely healthy.

I have enjoyed the support of an excellent Board of Directors during my period of office. The Directors come from a wide range of business backgrounds and their expertise and advice is invaluable in the running of the Club. As you will be aware Harry Gilbert has succeeded me as Chairman. Harry is well known to all in the shipping community and his wealth of knowledge will be a great asset to the Club in the future. I wish him, his fellow Directors and the Managers every success.

ITIC

THE PROFESSIONAL INSURER

The new ITIC website will be launched in the Autumn

Should you require news on the new ITIC website send an email to **itic@thomasmiller.com**

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