



THE
PROFESSIONAL
INSURER

Welcome to the spring 2010 edition of the ITIC Claims Review, which is published to coincide with the March 2010 meeting of the Club's Board of Directors in Mumbai, India. In this edition of the Claims Review, we have reproduced examples of the most frequent types of claims handled by the Club. The most common claims include reefer cargoes carried at incorrect temperatures and shipbrokers failing to pass on demurrage statements. Many claims can be attributed to a simple failure to follow your client's instructions. ITIC recommend that you review your procedures continuously in order that you avoid these types of situations occurring to you and your business.

claims review

Issue 21, March 2010

On deck/under deck

A shipbroker was approached by the cargo agent of a company which required a ship to transport two tanks from Holland to Wales.

The cargo agent provided the shipbroker with details of the cargo, and these details included various drawings. The shipbroker looked for suitable ships and made his recommendation. The ship was rejected due to cost. The drawings were not therefore forwarded to the shipowner.

A few other ships were looked at, but they were either not suitable or not available. The company was desperate to fix a ship to carry the cargo to the UK the following week, and late on the day before the Easter bank holiday weekend the company contacted the shipbroker directly to provide a precise instruction to proceed to fix the ship. On this basis, a charterparty was drawn up and the ship was fixed. The charterparty included the following clause:

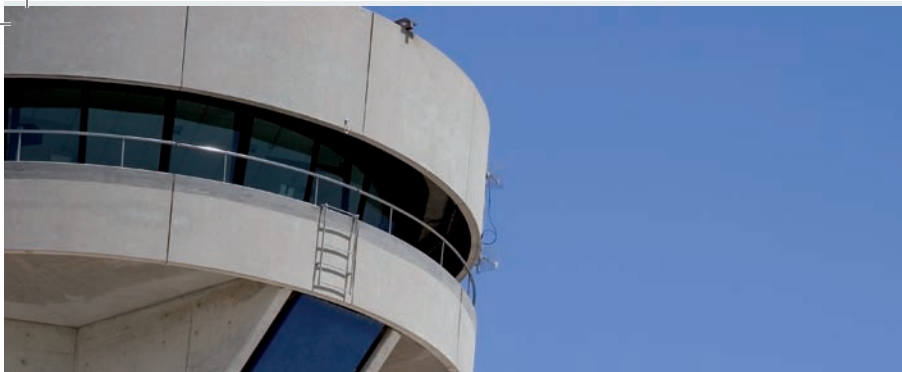
"For 2 tanks each 210 m ton 43.00 x 6.54 x 5.90m, one to be loaded under deck and one on deck option Charterers risk and expense"

When the ship arrived at the load port, the Master noticed that one of the legs of one tank would have to be located on the hatch cover. Following some calculations, the Master advised that the hatch lid could not take such a weight, without significant further dunnage. As there was insufficient dunnage, the Master refused to let the tank be loaded on deck, and ordered that, both tanks be loaded below deck.

continued overleaf >

ITIC
IS MANAGED
BY **THOMAS
MILLER**





Gas free or not gas free

In October 2008, a North American ship agent was nominated for the call of a ship scheduled to load at a terminal on the east coast of USA.

After the ship agent notified the terminal of the ship's pending arrival, the terminal foreman advised the agent that the ship had to be "gas free" prior to loading. This information was passed to the Master of the ship. The Master replied that his tanks were inerted to less than 2%. The ship agent did not pass this information on to the terminal.

The ship received loading instructions and proceeded to clean tanks while en route to the terminal. Just prior to arrival, the terminal sent a message again to the agent to the effect that the tanks would need to be gas free prior to loading. The ship agent passed this information to the Master who said that he would require 24 hours to make the ship gas free. This procedure was followed but the shipowner found subsequently that the terminal would have considered the ship ready to load in either a gas free state or an inerted state. A demurrage claim of USD 67,375 was incurred and this was claimed from the agent.

There were arguments on behalf of the agent as to why the charterers and the owners had not taken more care to ensure that the ship complied with the terminal's requirements, but the agent had to accept responsibility for an element of the demurrage claim. An amicable settlement was reached.

On deck/under deck

continued from front page

The loading was performed as per the Master's instructions. This involved turning the ship around as the available crane was unable to reach far enough to perform the revised loading.

As a result, the company complained that it had incurred additional costs that consisted of extra loading days, extra lashing and increased discharge port costs. The company instructed solicitors and claimed against the shipbroker for the alleged additional costs of EUR 76,244 and GBP 800 that it faced.

The company's solicitors alleged that the broker's failure to pass on the drawings to the ship owner was negligent and the cause of the additional costs. They alleged that if the drawings had been passed on, either sufficient dunnage or a larger crane would have been obtained prior to loading. ITIC defended the broker on the basis that the costs were not in fact "additional" at all but, rather, were simply the costs of loading and discharging the cargo to the Master's satisfaction. It was also argued that there was no negligence because the company had rejected the ship on the basis of cost, and it was therefore reasonable for the shipbroker not to have provided the shipowner with the drawings.

Following a meeting between the parties' solicitors and detailed correspondence passing between both sides, ITIC made an offer to settle of EUR 5,000. The company rejected this and countered with an offer of EUR 40,000.

ITIC countered with an offer of EUR 10,000 which the company accepted reluctantly.



Pirates plunder cash

A ship in a fleet managed by an ITIC member was boarded by Somali pirates. The pirates opened fire on the accommodation block, entered the bridge and stopped the ship. Following the pirates instructions, the ship's course was changed and she sailed to the coast of Somalia. The ship was kept by the pirates in Somalia for some months when she was released. Prior to releasing the ship, the pirates stole a large number of items. These included a cash box that was locked in a safe located in the Master's cabin. The cash box included USD 15,000 that had been placed on board by the Managers.

The ship manager had purchased ITIC's "cash on board" insurance. This product covers cash carried in a locked safe. The manager was reimbursed the sum of USD 15,000.

ITIC provides a range of products for managers and agents which cover monies temporarily in the member's care while in transit to a ship. The cover can also be extended to include monies, including petty cash, kept in the manager's office or at his residence overnight. Money on board can be covered when kept in a locked safe.

Always read the instructions

A reefer container of star fruit was booked for shipment from the Far East to northern Europe. The shipping instructions from the shipper and the booking confirmation from the shipping line, contained remarks “temp: +6c/ventilation 20% open”. Unfortunately, due to an error on the part of the staff at the liner agent in the load port, the reefer container list instruction for the eventual transportation of the container indicated that the ventilation should be “closed” rather than “20% open”. As a result, the cargo arrived in Europe in a damaged state and it was rejected. The shipping line negotiated the settlement of the cargo claim with cargo insurers.

The shipping line subsequently recovered the amount of USD 21,000 from the load port agent, whose negligence had caused the container to be transported with the incorrect ventilation arrangements. The claim was indemnified by ITIC.



A failure to arrange insurance

A ship manager was appointed commercial manager of a ship by its time charterers on the basis of BIMCO Shipman 1998. One of the ship manager’s duties was to arrange insurances if required. The time charterer gave a written instruction that insurance should be placed by the ship manager.

The time charterer had previously owned the ship but had entered into a sale and charter back agreement. The ship had been entered in a pool prior to the sale and this arrangement continued. The pool agreement provided that participants were to ensure that ships were insured adequately.

Some time later the ship grounded whilst entering a port in India. The owner commenced arbitration proceedings against the time charterer for allegedly directing the ship to an unsafe port/berth. At this time, it was realised that the ship manager had failed to arrange time charterers’ liability insurance for the time charterer.

The ship manager was not a party to the underlying dispute between the shipowner and the time charterer. The proceedings were protracted and the dispute was ultimately settled on a drop hands basis with the shipowner and the time charterer agreeing to pay their own costs but without the time charterer having to pay any damages to the shipowner. Although the time charterer’s position in the litigation had been vindicated, considerable legal costs had been incurred in reaching the settlement. These costs would have been paid under a charterers’ liability policy had one been in place.

The time charterer claimed against the ship manager and there was no question that the manager had failed to place the required insurance. Therefore, ITIC indemnified the ship manager for the time charterer’s claim.

Pay attention to immigration requirements

A member was appointed as the agent of a ship for approximately 14 days while decommissioning took place.

The agent was requested to handle the immigration requirements for the crew and others working on the ship. The agent did not however provide the correct information to the immigration authorities. This resulted in seven technicians coming ashore without the correct permits. As the men were not on the crew list, the customs did not consider them to be crew members. They were detained in a local prison.

The agent arranged for a local lawyer to represent the individuals and obtain their release from jail. The lawyer obtained their release and they were repatriated. A small fine was imposed on each individual.

The incident was the result of the negligence of the agent and ITIC agreed to pay for all legal fees incurred on this case.





A failure to arrange a veterinary inspection

A container of deep frozen salmon was discharged from a ship at a port in Scandinavia. ITIC's ship agent member acted as agents for the carriers. All foodstuffs entering the EU from outside the EU must undergo an official veterinary inspection at the first point of import into the EU. The consignees, asked the agent to arrange for the veterinary inspection and thereafter for the container of salmon to be transported to their premises. As the carrier's responsibility under the bill of lading ceased at the port, the agent was acting as a freight forwarder in arranging the haulage/veterinary inspection.

One of the agent's employees notified the consignee by e-mail of the arrival of the goods, informed them that a date had been arranged for the veterinary inspection, and asked for their confirmation. The employee went on holiday. The consignee failed to reply to the e-mail concerning the veterinary inspection and subsequently telephoned the member asking for immediate delivery. The individual at the member's office who had taken over the matter simply arranged for trucking without the veterinary inspection.

Part of the cargo was delivered to one of the consignee's customers before it was realised that the salmon had not been inspected by the veterinary authorities. The National Veterinary & Food Administration ordered the salmon to be destroyed, and the member received a claim from lawyers acting for the consignee for US\$200,000 approximately, for the loss of the cargo, destruction costs, legal costs etc. ITIC appointed a lawyer, who advised that the agent had

defences, and who insisted that the consignee appeal the destruction order on the grounds that it was a waste of valuable resources to destroy the salmon, which was still frozen and still in good condition.

The appeal did not succeed, and the matter eventually went to court. The agent's main defence was that they were entitled to rely on the limitation amount in the terms and conditions of the member's national trade association of SDRs 25,000 (US\$40,000 approximately). The Club's lawyers also alleged that the consignee was guilty of contributory negligence in that it failed to check that the veterinary certificate was included in the papers.

The court found in favour of the consignee, but for an amount of US\$95,000 plus interest and costs (50% of the amount claimed). Although an attempt had been made by the agent to incorporate the terms and conditions of the national trade association into their contract with the consignee, the court found that they had not done so sufficiently clearly. The court instead applied the general terms and conditions of the national Freight Forwarders Association, which provided for a limit of liability of US\$141,000. However, the court also found that the consignee had contributed to the loss as they failed to check that the veterinary certificate had been provided, and therefore reduced the settlement to US\$95,000.

ITIC also incurred costs of US\$29,729.

While the broker is away....

In 1993, a shipbroker had a receptionist who filed a demurrage claim into the fixture file without notifying the post fixture staff of its existence. The shipbroker incurred a demurrage claim. Since that date; the company has been rigorous in controlling its demurrage systems and procedures. ITIC is asked on a regular basis to inform the staff of the potential claims that could be made against them and where to ensure they limit or reduce the company's exposure.

Some years later, the shipbroker received a claim. The individual broker, to whom it was sent, was absent and the claim remained on his desk and was forwarded to the charterers after the time bar had expired. On his return the shipbroker was alerted to the oversight and brought it to the attention of ITIC. The claim amount was USD 50,000 and ITIC indemnified its member.



International Transport Intermediaries Club Ltd. – ITIC – is a mutual insurance company with over 80 years of experience of providing professional indemnity insurance to companies involved in the transport industry. For further information on any of the products, services or cover provided by ITIC contact Adam Jacobson at: International Transport Intermediaries Club Ltd, 90 Fenchurch Street, London EC3M 4ST.

tel + 44 (0)20 7338 0150 fax + 44 (0)20 7338 0151 e-mail ITIC@thomasmiller.com web www.itic-insure.com

© 2009 International Transport Intermediaries Club Ltd