Forbidden scrap

A liner agent accepted, on behalf of a shipping line, a cargo of scrap plastic from the southern hemisphere to the Far East. Unfortunately the agents had previously received instructions from their principal not to accept any waste or scrap material for shipment to the Far East.

When the cargo arrived at the destination, the authorities prohibited its import and required it to be re-exported, resulting in various costs totalling USD 20,000 being incurred by the shipping line. The line was unable to recover these costs from the shippers, who had disappeared. The line looked to their agent for reimbursement of these charges, which included storage charges, port charges, customs inspection fees and container demurrage.

ITIC, through the local Thomas Miller office, sought advice to determine whether the three months it took to re-export the cargo was reasonable. The local office confirmed that the costs were reasonable and arose solely from the failure of the liner agent to follow the shipping line's instructions. On this basis, ITIC agreed to reimburse the agent, net of the deductible, for the full USD 20,000.

A tidal change

In early 2011 a ship agent at a tidal port in Japan was asked to provide a tide table to enable the owner of a ship to calculate the permissible drafts for the dates his ship was due to berth at the port. The ship agent duly scanned the tide table and sent it electronically to the owner. The ship arrived at the port with a draft of 8.56m, but was informed by the port authorities that the permissible draft was only 7.8m.

Unfortunately it emerged that the agent had inadvertently sent the owner the tide table for 2012 instead of 2011. The two tide tables were kept together in the same file, and during scanning the corner of the tide table had folded over, thereby obscuring the year. The excess draft meant that the ship could only discharge for about 4 hours in the morning and 2 hours in the afternoon. The ship had to shift anchorage three times during the four days it took her to discharge, which was twice as long as it should have taken had the shifting not had to occur. The owner claimed the pilotage and towage costs involved in shifting to the anchorage three times, plus two days hire, additional bunker consumption, additional stevedoring, which totalled USD 143,000. It was agreed by the owner that some of the costs would have been incurred in any event, and the claim for additional costs was settled at USD 120,000.

Berth booking blunder

Ship owners appointed a port agent for the call of their vessel for bunkers. The agent failed to complete the required customs formalities in time to book the berth. Unfortunately, this mistake went unnoticed until the vessel was approaching the port. After being notified by the agent of the mistake, the ship owner decided to divert the vessel to another port around 500 km north of the original port as the bunker berth at the first port was not due to become free for another five days. The ship agent also operated within the second port and the bunkering proceeded without incident.

When the time came to settle invoices totalling USD 26,000 issued by the various service providers in the second port, the owners refused to pay. The owners claimed that these additional costs had been incurred by them as a result of not being able to call at the original port. The costs were in fact the normal charges that related to bunker calls, such as tugs, security charges and pilotage, and would have been payable by the owners in any event, even if the vessel had been able to call at the original port. However, the vessel had been delayed by two days and it was estimated had incurred costs that exceeded this amount for fuel and other costs, as a result of having to travel 500 km to the second port. Rather than enter into a dispute with the owners, the ship agent paid the port costs for the bunker call, and was reimbursed by ITIC, net of their deductible.

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ITIC
SPECIALIST PROFESSIONAL INDEMNITY INSURANCE

Welcome to the Autumn edition of the ITIC Claims Review, which is published to coincide with the September 2012 meeting of ITIC's Board of Directors in London, England.

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Turbine trouble

Ship owners entered an agreement to carry a number of wind turbines. They instructed one of ITIC's naval architect members to carry out work to enable the vessel to load the highest possible number of wind turbines. The member's work involved the layout and design of supports to be welded in the holds.

The conversion works were carried out by a ship yard on the basis of the member's design.

At the first load port, the ship owner found that due to a bulkhead the supports in the hold could only be used to load four turbines instead of the intended six.

The ship owners commenced carrying the wind turbines four at a time. They brought a claim against the naval architect for the costs of redesigning and rectifying the supports as well as the additional costs of performing more voyages. The estimate for the rectification works was EUR 40,000. The owner's estimated claim for additional expenses was EUR 60,000. The owners made it clear that this figure would increase if many more voyages were performed with only four turbines on board.

ITIC arranged for an independent expert to review the position. The expert found a solution to the problem of the bulkhead which would only cost about EUR 16,000. Discussions were held with the owners to reach a settlement agreement and arrange a suitable time to carry out the works which would enable the vessel to carry six turbines on the remaining voyages.

It became apparent that the economic benefit of arranging the works was marginal and the ship owners agreed to accept a payment of EUR 26,750 to cover their additional costs. The bill was picked up by ITIC, net of the applicable deductible, plus all the fees.

ITIC
IS MANAGED
BY **THOMAS MILLER**

Incompatible cargoes

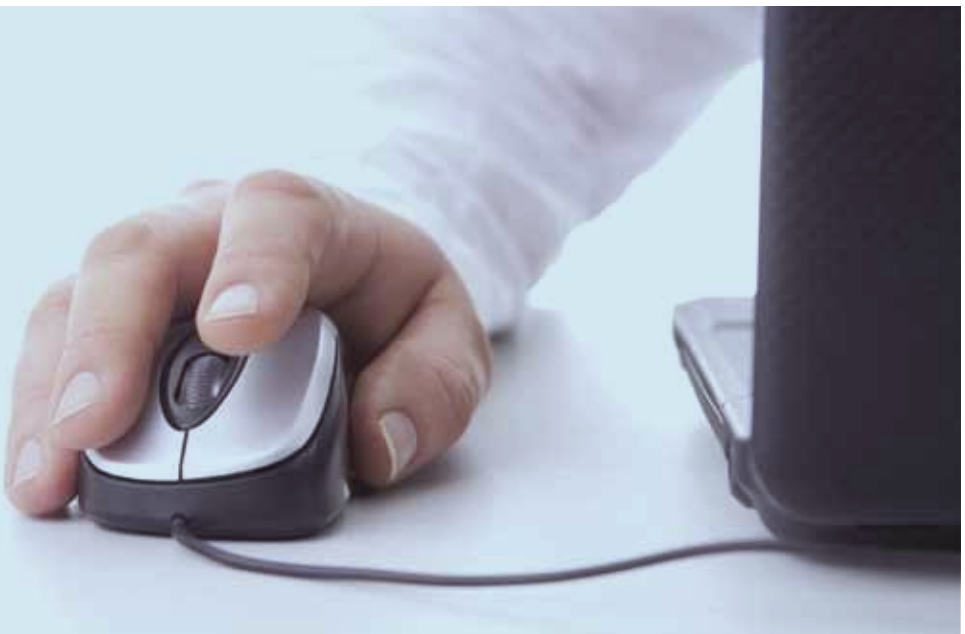
A commercial manager fixed a ship to load two parcels of chemicals. Unfortunately, after the fixture had been confirmed, it was discovered that two cargoes which could not be stowed next to one another had been booked. Although the commercial manager had checked in the relevant guidelines, which clearly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

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

The claim from the owners comprised the deadfreight claim on the first ship and the expenses incurred for having to fix a second ship to load the caustic soda. The total of these losses was USD 212,585. This was paid by ITIC, less the commercial manager's deductible.

Put it in writing

ITIC has seen an increasing number of claims on its shipbroking members relating to the receipt and forwarding of messages. The following claim demonstrates the importance of accurate record keeping and the need to reconfirm telephone conversations in writing.



A shipbroker, acting for charterers, found himself in the middle of a dispute between the owners and charterers concerning a substantial demurrage claim. Charterers failed to settle the owner's claim for demurrage in excess of USD 400,000 and the owners commenced arbitration in London, in accordance with the terms of the charterparty. As the charterers failed to nominate their arbitrator, the owners nominated their chosen arbitrator as sole arbitrator, again in accordance with the terms of the charterparty. Despite orders from the sole arbitrator for the charterers to serve defence submissions within a required period, no defence or communication was received from them. The arbitrator awarded owners the full amount of the demurrage claim plus interest and costs (a total of USD 575,000)

Owners attempted to collect the award against the charterers through the US courts. The charterer's defence was that they had never been advised of the arbitration proceedings and therefore had not had an opportunity to appoint an arbitrator to defend their position. The charterers also alleged that the shipbroker had failed to inform them about the arbitration, and that if the arbitration award was enforceable it should be paid by the broker. Charterers brought the broker into the US action by filing a third party complaint. The broker confirmed that he had advised the individual responsible for all vessel charters by telephone regarding the appointment of an arbitrator and again when arbitration proceedings had commenced. Unfortunately he failed to confirm this by e-mail and there was therefore no written evidence to support the broker's position. The charterer, well aware of lack of written confirmation, simply denied that such telephone conversations took place.

ITIC appointed lawyers to protect the interests of the broker and conducted a detailed review of the matter. An area of concern was that, if the court found the broker to be an "agent" of the charterer, then it could be argued that service of notices regarding arbitration proceedings on the broker could be deemed to be service on the charterer. This could mean that the arbitration award was enforceable against the charterer, who in turn may have pursued the broker for the full value of the award.

The case was concluded at a court ordered mediation by means of a payment to the owners of USD 450,000. The broker contributed USD 75,000 to the settlement, and the legal costs of defending the broker were in excess of USD 140,000 – a total of USD 215,000 – a high price to pay for a simple failure to follow up a telephone conversation with an e-mailed confirmation.

Who pays for heating?

When a tanker broker arranged a voyage charter, the recap e-mail stated that the lump sum freight was inclusive of maintaining loaded temperature. The cargo description also stated "vessel to maintain loaded temperature".

There were discussions between the broker and the charterers, with the charterers asking if the price included heating (allegedly without stating whether maintaining heat or heating up). The broker told them it did, but did not specify what this referred to.

It is normal for the vessel to pay the costs of maintaining the temperature of the cargo as loaded. The pro forma that was used for this fixture was silent on the issue of the costs of heating up. It was noted that Clause 25 (a provision that charterers would pay the costs of increasing the temperature of a cargo) of the charterer's additional terms had been deleted. The reason for this deletion was probably that the charter was based on a pro forma which had been used on a clean products charter where such provisions were not necessary.

The owners insisted that the lump sum freight only included maintaining temperature as per the fixture recap. The charterers faced a bill of USD 170,000 for heating up the cargo and stated they had sold the cargo on the basis the freight covered all costs. They claimed they had been mislead by the broker.

Ultimately the claim was settled at USD 100,000, which was paid by ITIC, less the deductible.

Persistence pays

Shipbrokers notified ITIC of their concern about outstanding commission owed to them by time charterers, who were widely thought to be in financial difficulties. The charterparty provided that the time charterers were obliged to deduct the broker's commission from the hire and pay this directly to the brokers. The charterers had deducted EUR 50,514 commission from hire paid, but had only paid EUR 20,000 to the brokers; payments suddenly ceased without explanation.

ITIC wrote to the time charterers on behalf of the shipbrokers on two occasions and were advised that payment was to follow, however no money was ever received. A local lawyer was then appointed and contacted the debtor directly, warning that ITIC would consider a ship arrest should the next instalment not be promptly received. This prompted the payment of a further EUR 10,000, leaving EUR 20,514 still owing. Payments ceased again.

ITIC was advised by the local lawyer that it was not possible to arrest the ship against which the commission had been incurred because the debtors were only the time charterers. However the charterers had their own fleet of ships. A ship owned by the charterers was due to arrive in a jurisdiction where she could be arrested for shipbroker's commission. An arrest order was obtained, and this produced another payment of EUR 10,000. Unfortunately, no further payments were received and it became apparent that the ship on which the arrest order had been obtained was held up at the previous port and the arrest order could not be served. An arrest order was therefore obtained to arrest another of the debtor's fleet. This arrest was effective and the debtor paid the balance owed. The legal costs were paid by ITIC.

The penalties of stowaways

When a vessel was attempting to leave the berth, the presence of a stowaway onboard was discovered. The ship agent immediately contacted the Immigration Authorities to ask them to remove the stowaway, but failed to notify the port authorities to obtain a time extension for leaving the berth. As a result of vessel's delay in leaving the berth, the port authorities imposed a penalty of USD 5,000 and refused to grant port clearance until the penalty had been paid. It was late in the evening when the ship agent received notice of the penalty and it could not be settled until the banks opened the following morning. In addition to the penalty the ship owner incurred considerable costs as a result of the delay in departure of the vessel. ITIC covered the costs plus the penalty.

Don't rock the boat

A yacht broker incorrectly marketed a yacht as having zero speed stabilisers, which it in fact did not have. The owners of the yacht brought a claim against the broker alleging that this misdescription in the run up to the summer season had cost them lost chartering income of EUR 500,000.

ITIC analysed the claim from the owners and realised that only one single week's lost charter had resulted from this error. The yacht brokers had been able to find charters that season regardless of the misdescription. Furthermore, owners had not complied with the broker's request to keep the yacht fully available for charter, instead putting it into the yard for repair work during this period.

Faced with these arguments, the yacht owner reduced his claim to EUR 30,000. ITIC continued to assist the yacht broker in rejecting the claim from the yacht owner, until the yacht owner decided to withdraw his claim.