

ITIC Claims Review



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Welcome to edition 15 of the Claims Review. ITIC regularly publishes this digest of cases that have been handled by the Club. Our aim is to assist you to identify potential areas of risk. We hope therefore that these examples will gain a wide circulation in your offices. We are also ending this edition by marking the retirement of Mr. Tony Payne, the Managing Director of ITIM Co. Ltd., the managers of ITIC.

NOT OUR BILLS

Ship agents based in South America found themselves being pursued by owners of a ship that they had never represented. The claim was for legal costs that those owners incurred for filing a response to legal proceedings issued by cargo insurers.

Due to a simple error in the ship agents' office, a bill of lading was issued in the name of "Good Ship" instead of "Good Ship I". The documentary error went unnoticed. The "Good Ship I" arrived in Miami, USA where the cargo was found to be damaged. Legal proceedings were subsequently issued by cargo insurers against the owners of the ship named in the bill of lading.

The owners of "Good Ship" had to instruct lawyers to file a response to the demand to avoid judgment being entered against them. The defence they filed denied liability on the basis that the "Good Ship" was not the correct ship. The claimants eventually accepted that this was the case and pursued their claim against the actual carriers. Fees and legal expenses incurred by the owners of "Good Ship" were claimed from the agent. It is interesting to speculate what would have happened if the claim against the actual carriers had become time barred before the error was resolved.



POSSIBLY THE FIRST ARREST

ITIC has assisted a shipbroker to obtain, what we believe, is the first arrest of a ship in a Commonwealth law jurisdiction for unpaid commission. The shipbroker had commenced London arbitration proceedings in accordance with the terms of the charterparty. The arrest took place in Auckland, New Zealand to obtain security for the amount claimed and the legal costs of the arbitration. The owners provided a bank guarantee as security.

This case is an example of the increased ability of shipbrokers to take effective legal action to enforce their rights to commission. The relevant provisions of New Zealand law are similar to those found in England and other Commonwealth jurisdictions. This arrest has set a useful precedent.

SHIP MANAGERS – ERRORS WHEN ARRANGING INSURANCE



One of the duties undertaken by ship managers is to arrange insurances. Shipman 98 provides that this shall be “on such terms and conditions as the owners shall have instructed or agreed, in particular regarding conditions, insured values, deductibles and franchises”. ITIC has dealt with a number of situations when the placement of insurances has left the manager facing a potential claim. The following are typical examples:

A ship manager failed to recall that the hull policy excluded Cuba. The cover was placed when the ship had been

trading under the terms of a charterparty that excluded Cuba from the acceptable range. The ship entered a new charterparty and was not only trading to Cuba, but sustained a fire in Cuban waters. The ship manager faced a claim for the owner’s uninsured losses.

In another case, a ship manager was instructed by principals to insure a ship’s hull and machinery for a value of US\$ 5,000,000. Subsequently the manager was given a copy of the bareboat charter which contained the requirement that hull insurance of US\$ 12,000,000 would be obtained and maintained in place. The manager did not notice this provision. Subsequently the ship was involved in a collision and the shortfall was discovered. The owner claimed that the manager should have pointed out the discrepancy. On this occasion the damage was not significant, but the manager could have faced a substantial claim.

Although Shipman 98 provides that the owner shall instruct or agree the terms of the cover, any shortfall in the amount

insured can be a problem for the ship manager as a joint assured under the policy. In the following example, however, the manager chose an unrealistic level for his own insurance.

The ship managers provided crew to a managed ship. They employed the crew and their contracts made them responsible for, amongst other things, crew medical costs. They had also contracted with the owner to arrange crew P&I insurance. There was an accident on board the ship that resulted in two crew members being severely injured. The ship was close to the USA and the injured crew were evacuated to that country. Their medical expenses were approximately US\$ 20,000 each per day, but the insurance arranged by the managers was only for an amount of US\$ 200,000 for each crew member. This limit was to cover both the medical costs and also compensation to the injured crew. The claims rapidly exceeded the policy limits and the manager had to make up the shortfall.

CHARTERPARTY TERRITORIAL EXCLUSIONS



In the previous section, one of the claims arose because the insurance policy excluded Cuba. Territorial exclusions in charterparties regularly give rise to claims against shipbrokers and managers.

A pool manager fixed a ship to carry oil to the USA, but the bareboat charter contained a provision that no US business should be arranged. The cargo had to be transferred to another ship and the pool

manager faced a claim for the costs involved including the ship-to-ship transfer, the hire of the second ship and time lost by the owners.

A shipbroker fixed a ship for four period charters – one main and three re-lets. The negotiations were conducted within a very short period. The shipbroker omitted to include in the second re-let a provision that the ship could not trade to South Africa. This was the result of an existing legal dispute involving the head owner who faced the prospect of the ship being arrested in that jurisdiction. They had therefore excluded South Africa in the head charter. The ship was re-delivered from the final sub-let in the Red Sea/Aden, where the most natural and cost effective loading area for the next cargo was South Africa. The head owner refused to go to South Africa and pointed

to the terms of their charterparty. Ultimately, a different fixture was arranged, but the end-charterers claimed substantial losses from the shipbroker:

A shipbroker was negotiating on the basis of the load port being “one safe port Russian Black Sea”. The charterers asked whether this included Odessa. Unfortunately, the broker failed to appreciate that Odessa was in the Ukraine and not Russia and answered that the ship was able to load at Odessa. The owners refused to accept orders to Odessa saying it was outside the description “Russian Black Sea”. They finally agreed to go, but only on the basis that the charterers would pay the other additional charges. Due to the fact that the ship flew a flag of convenience, these charges were increased by local punitive tariffs.

PHYSICAL LIMITS

A ship agent in the Far East was approached by an owner asking for details of the maximum draft at a jetty at the port. The person in the agent's office who usually dealt with calls at the jetty had recently left the agent's employment. Another employee advised the owner that the draft was 10.5 metres. However, dredging work in the vicinity of the jetty meant that the maximum draft had been reduced by the port authorities from 10.5 metres to 9.5 metres. All port users (including the agent) had been advised of this revision. Due to the absence of the employee who was familiar with the jetty, the owner was advised of the old draft.

The ship owner calculated the rotation of the several ports at which the ship would discharge based on the incorrect information provided by the agent. The first discharge was to be at the jetty at the agent's port, but the ship could not discharge because she had a draft of 9.9 metres. As a result, the owner was forced to perform a ship-to-ship transfer of part of her cargo. The owner incurred additional expenses of US\$ 30,000 and claimed reimbursement from the agent.

This is not the only occasion on which the absence of a key member of staff has led to this type of claim. Some years ago, an agent received a request to

confirm the ship was suitable to call at a port situated a short way down the coast from the agent's office. The employee who dealt with that port had just gone on leave. A junior member of staff checked the draft restrictions carefully and confirmed the ship's suitability to the owners. Unfortunately, the employee overlooked the need to use a lock to enter the port and the ship was too long.

DESIGN COLLAPSED

A naval architect was appointed to oversee the design and build of a cradle to be used for the "slipping" of a floating restaurant out of the water for routine maintenance. The wheels of the cradle collapsed whilst the vessel was being removed from the water, resulting in a severe delay in the maintenance. The owners of the restaurant claimed damages from the naval architect,

including the costs of the re-design and manufacture of a second cradle and loss of earnings whilst the restaurant was closed. ITIC entered into dialogue on the assessment of the damages and the true extent to which the failure of the cradle could be attributed to an error in design. The result was a partial settlement of the claim.

REGULATORY DEMANDS

There has been a rise in the regulatory burden facing all those in the marine industry. This pattern is likely to continue. Often the practical task of ensuring compliance falls on the ship agent and regulators are increasingly imposing fines on agents as well as their principals.

Under local regulations in Peru it is necessary for a ship's master to report that the ship is entering Peruvian waters to the port captaincy office. Ship agents routinely report these regulations to the master as well as providing the contact details to which the master must report. On a number of occasions the port captaincy office's contact details have been changed and local agents subsequently failed to provide arriving ships with the correct details. In these cases both the owners and the local agent have faced fines from the port captaincy for failure to comply with the reporting regulations.

The level of fine has ranged between US\$ 900 to US\$ 14,000.

The most well publicised regulations relating to ship arrivals are the "24-hour" rules applicable to ships arriving in the USA. Liability for non-compliance is strict and punitive. In issue No. 14 of the Claims Review, ITIC looked at a claim arising from the failure of an agent to provide the US Bureau of Customs and Border Protection with details of a cargo of whisky. The application of these regulations continues to give rise to claims.

The most recent example led to a demand for US\$ 100,000 against an agent who failed to realise that the U.S. Coast Guard's policy was not to allow consecutive ports of call to be added to an already submitted Notice of Arrival. Regulators are increasingly demanding compliance with the detailed provisions of regulations.

There are however cases when regulations do not give authorities the rights they claim.

Following damage to a quayside ladder by a visiting ship, a UK ship agent received a routine letter from the port authority holding the master and owners of the ship responsible. When the owner failed to pay the invoice, the port authority wrote to the agent insisting that they, as agents, were legally liable to pay the invoice themselves. ITIC researched the relevant Statutory Instrument to which the port authority had referred, and in co-operation with the ship agent, explained to the port authority that they had misinterpreted its provisions. As a result, the port authority re-directed their attention towards the ship owner and the ship agent was left to continue with their business.



ASK BEFORE AGREEING...

ITIC is always available to give a practical view of documents that you are asked to sign. ITIC will shortly be circulating a **Guide to Ship Agency Contracts** and a **Guide to Ship Management Contracts**. ITIC regularly review a wide range of forms and contracts. Any shipbroker members who have not had the wording of their valuation certificates reviewed recently are invited to send them to ITIC. Surveyors are often asked to sign disclaimers, indemnities and other releases before boarding a ship. Members should contact ITIC if they have any concerns about such documents. ITIC's Standard Terms for Surveyors and Consultants are available on the Club's website www.itic-insure.com.

WORLD CUP

Any Members or insurance brokers are welcome to join us on 15th June 2006 to watch England-v-Trinidad and Tobago at the Chamberlain Hotel in the Minories, London, EC3. More details will follow nearer the time.

TOUR POUR LA MER



ITIC has entered a team, comprising **Christopher Arnold, Robert Sniffen, Roger Lewis and Vincent Egon** in **Tour Pour La Mer**. It is an independent bike ride from Greenwich, London to Le Touquet, France, to raise money for The Missions to Seafarers and Sea Alarm charities. If you wish to sponsor the ITIC team, you can do so via : www.justgiving/itic.com

TONY PAYNE



Tony Payne, ITIM's managing director, is retiring at the end of March 2006. Tony started life as a ship agent in both Singapore and Jeddah, which uniquely qualified him to manage a Club whose membership includes most of the world's leading ship agents.

Tony's involvement with insurance started in the mid 1970s, when he took over the management of Miller Limited E.P.E., who were the Lloyd's Agents and General Correspondents for the UK P&I Club in Greece.

In 1985 Tony was asked by Thomas Miller, the managers of the UK P&I Club, to return to London to help manage the newly formed TIM (one of the predecessors to ITIC). In 1992 Tony played a major part in the merger of TIM and CISBA to form ITIC. In 1992 ITIC had 720 Members, and Tony was instrumental (with the rest of the ITIM team) in growing the Club to its current strength of 1700 Members in more than 100 countries.

For several years Tony was the account executive for Members in the Middle East, USA and Canada. He has maintained a keen interest in these areas and has regularly travelled there. One of the many highlights of recent years have been ITIC's two Member Forums in 2000 and 2004. Tony welcomed Members from all over the world to these large scale events. We wish Tony a long and happy retirement.

INSIGHT COURSE INTO TRANSPORT LAW AND INSURANCE

This is a four day course run by Thomas Miller. It is a practical course for the non-insurance specialist, focusing on P&I and Through Transport claims scenarios. It is aimed at executives and managerial staff who are in the early stages of their careers and those who do not have specialist insurance and claims experience. It will take place at the Great Eastern Hotel in London from 25th to 28th September 2006. For further details please contact Zareena Hussain at ITIC@thomasmiller.com.

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 Charlotte Kirk at: International Transport Intermediaries Club Ltd, International House, 26 Creechurch Lane, London EC3A 5BA, United Kingdom.

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