



## The FONASBA Quality Standard for Ship Agents and Brokers

In order to assist shipowners and operators to identify those agents and brokers that are knowledgeable, have experience, a good financial standing and background and a demonstrable and tangible commitment to quality, FONASBA has developed its Quality Standard, which was launched in October 2007.

Intended to be directly relevant to the duties, responsibilities and liabilities of the agency and broking community, the standard is only granted to those companies that:

- are a member of a FONASBA member association
- can prove their financial standing in accordance with the accounting laws of their country of domicile and
- have made a firm commitment to professionalism and the ongoing education and training of their staff.

The companies that are granted the Standard will be subject to at least a biennial audit by their association, overseen by FONASBA, to ensure the required criteria are maintained. FONASBA is now rolling the programme out across its membership and the first applications for approval are now under review by the Federation's Executive Committee.

Further information on the FONASBA Quality Standard is available from:

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or from the FONASBA website: www.fonasba.com



THE PROFESSIONAL INSURER

Welcome to the Spring 2008 edition of the ITIC Claims Review, which is published to coincide with the March 2008 meeting of the Club's Board of Directors. In addition to the usual range of interesting cases that the Managers have encountered over the past few months, we also draw your attention to the ITIC Forum 2008, to be held in London on 1st and 2nd October 2008. We also give you advance notice of the Managers' forthcoming change of address.

# claims review

Issue 18, March 2008

## Failure to consider off-hire provisions

Members acted as technical and commercial managers for a ship that was on a time charter. The fixture still had about three years to run at a daily hire rate of USD 15,250. The charterparty contained a clause which provided that "should the vessel be off hired for a minimum of 20 days (consecutive or not) within any period of 60 (sixty) consecutive days, or should an off hire be estimated to last a minimum of 20 (twenty) days the charterer has the option of cancelling the remaining period of charterparty redelivering the vessel to owners".

The ship suffered engine damage on three occasions during one such sixty day period. Repairs were arranged on each occasion. Some of the repair work fell behind schedule. The total off hire period was 23 days 5 hours and 15 minutes, more than 3 days in excess of the 20 days that the time charter allowed. The charterer took the opportunity to cancel the remainder of the time charter and offered to take the ship back at a rate of around USD 2,000 a day less than the original daily rate.

Over the course of a three year charter, this would mean that the owner would lose an amount of about USD 2,200,000.

The market had fallen since the original charter had been agreed and the owners had no option but to accept the offer. Subsequently, they claimed their loss from the managers. They alleged that the manager had failed to notify them that the repairs would take longer than anticipated and that the 20 days off hire limit would be breached. The owners claimed that if they had been made aware of the position they would have had taken action to speed matters up and/or delay some of the work to prevent the right of cancellation accruing. The manager's liability to the owners for negligence under the terms of the BIMCO Shipman 98 Agreement was limited to 10 times the annual management fee.



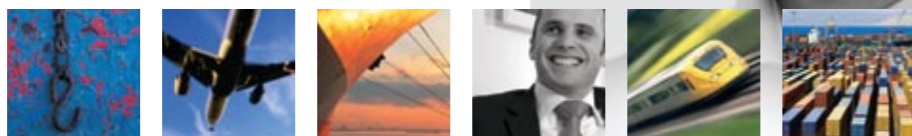
ITIC IS MANAGED BY THOMAS MILLER



The Club is pleased to announce that the third ITIC Forum will take place on 1st & 2nd October 2008. The event will be held at the Dorchester Hotel in London's West End with a cocktail party at the Kensington Roof Gardens.

As in previous years, the event will explore topics of mutual interest, provide training and give you the opportunity to network with other members and industry professionals, both in your own field of business and in related areas.

Invitations will be sent to Members shortly and you will be able to view the contents of the Forum at [www.itic-forum.com](http://www.itic-forum.com). We look forward to seeing as many people as possible at the event.



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## The true cause of vessel instability?

A naval architect member of ITIC designed two vessels to be built to US Coastguard rules for work in the Gulf of Mexico. Shortly before the completion of the first vessel, the member advised ITIC that it had made an error the result of which was that the vessel would not meet the strict stability criteria.

As the delivery date was fast approaching, a solution to the problem was agreed between our member and the ship builders. This involved the fitting of two new bulkheads. However, shortly after the rectification work commenced, it transpired that there was nothing wrong with the original design. The cause of the apparent failure to meet the stability criteria was due to the use of different versions of software. The hull model was generated on a new version of the software, while the analysis was generated on an older edition. Rectification work ceased immediately and the vessel was restored with some minor modifications to the original design. The shipyard made a claim of USD 95,000 for the unnecessary work carried out. ITIC indemnified the member.



## Settle now or pay later

A bank appointed a surveyor member of ITIC to confirm the value of a vessel under construction and to certify that additional funds could be drawn down during the construction period. The bank confirmed that the role of the surveyor was not to monitor the standard or quality control of the ship's construction nor its conformity with design.

Defects were found in the ship after construction and the owners sued the ship builder, the surveyor attending to the quality control of the build and also ITIC's member who was only acting on behalf of the bank. Legal proceedings against all the parties took two and a half years to conclude.

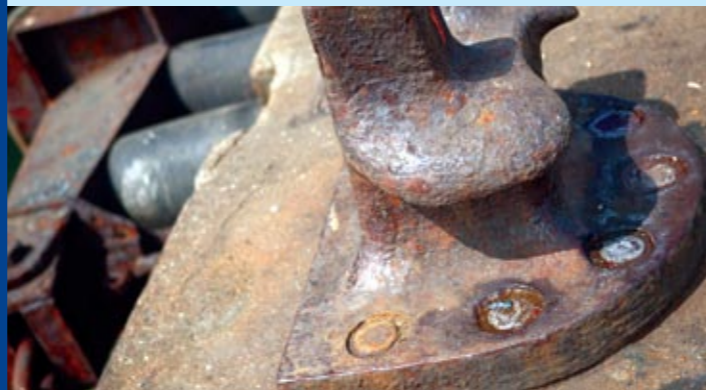
In order to finalise this matter, the club agreed to contribute EUR 35,000 towards the total settlement of over EUR 300,000 which was negotiated at mediation. A further EUR 30,000 was incurred in legal costs.

This is an unfortunate example of where a surveyor can end up contributing to a settlement even though his instructions and responsibilities were clear from the very beginning.

## The wrong bollards

ITIC's member designed some bollards to be placed in a north European port. Most of the bollards were welded into position and were satisfactory. A small percentage of the bollards were to be removable for use with roll on roll off ships docking at the quayside. All the removable bollards failed during testing. It transpired that the thread specified for the anchor bolts was the wrong type and the anchor bolts pulled out during stress tests.

The bollards were sent back to the UK for retooling and were redelivered to the customer. The costs incurred due to the failure in the design amounted to USD 90,000. This amount was settled by ITIC.



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## A foul up on paper

An FFA broker was negotiating a Panamax contract for December. The negotiations were slightly unusual in that they took place in December, once the month had already started. The principal had done relatively few FFA transactions and initially agreed to sell a contract with a settlement period for the remaining part of the month; however, during negotiations he was informed that the settlement rate could be calculated over the whole month (including the period that already passed) and he changed his requirement to include the full month.

At this stage the broker had to leave the office to travel on business and handed the deal over to a colleague. His replacement failed to appreciate the change in the principal's requirement and sold the FFA contract with the original 20 day settlement period. The market moved against the principal and the amount he had to pay out on the contract was greater because of the broker's error. The Club indemnified the broker.

## Beware of local laws

Venezuela, in common with many countries, has regulations to protect domestic shipping. Foreign flagged ships can obtain a permit when there is no local tonnage capable of performing the required service within Venezuelan waters. The permit is usually given for 30/60/90 days. When the service is complete, customs formalities must be finalised before the vessel leaves for international waters.

A foreign flagged ship was operating between two ports in Venezuela under such a temporary admission permit. The ship's agent, a member of ITIC, failed to request the Customs Authorities to carry out the necessary formalities. The agent mistakenly assumed that the ship was going to do another local voyage. In fact, the charterers had ordered the vessel to Port Everglades. In order for the Customs Authorities to carry out the necessary formalities the vessel was obliged to return to port. If they had not done so, the ship would be at risk of arrest and her owner liable for a fine upon her return.

A claim was made against the ship agent for the lost time and additional bunkers consumed. The claim was settled for USD 36,000.



## Unusual demurrage notification

A shipbroker member of ITIC fixed a tanker for a voyage from the Black Sea to Singapore. Delays at the discharge port resulted in a demurrage claim of USD 217,000.

The charterparty contained the usual provision that any demurrage claim had to be presented within 90 days together with supporting documents. The way the demurrage claim was forwarded was not however straightforward.

The owner's post fixture department sent an e-mail to the chartering arm of the owner's organisation attaching details of the demurrage claim, copying the message to the shipbroker. Allegedly this channel had been used in the past and it was always understood by the owner that the shipbroker would pass on the claim. This arrangement had not been formalised and, on this occasion, the broker overlooked the e-mail. As a result, the charterer rejected the owner's demurrage claim as time barred. The owners then claimed against the brokers.

One issue was whether it was reasonable for the owner to rely on a broker who had only been copied in on the message to pass it on. The difficulty for the broker was that they had done so in the past and it could be argued that they had assumed responsibility for doing so. In the event, the time bar clause in the charterparty contained an additional provision that legal proceedings had to be commenced in the High Court in London within six months of final discharge.

The owners failed to issue proceedings in time and the claim was time barred.



## New address

**In July 2008, the Managers of ITIC will be moving their offices to:** 90 Fenchurch Street, London, EC3M 4ST. Telephone numbers and email addresses will remain the same. We will advise you of the exact date of the move nearer to the time.



## When is a major not a major?

A bunker broker received an order from a ship operator for a stem of fuel oil and marine diesel oil. The operator provided the specifications and quoted the bunker clause from the relevant charterparty which stated, "Bunkers to be supplied only by the international oil majors (i.e. Exxon, BP, Shell, Chevron, Mobil, Texaco or their merger successors)". Unfortunately, the broker had failed to read the bunker clause properly, obtained a good price from a large international oil supplier and provided the quote to the operator. The operator asked whether the supplier was a "major" – the broker checked with the physical suppliers who confirmed that they were a "major supplier of oil worldwide".

The day before the ship was due to lift the bunkers it became clear that the supplier was not a major as defined by the charterparty clause. The booking was cancelled and a new booking made from a recognised oil major. Unfortunately the market had moved against the operator since the original booking and the replacement booking cost him USD 25,000 more, which he claimed from the broker.