



THE  
PROFESSIONAL  
INSURER

# claims review

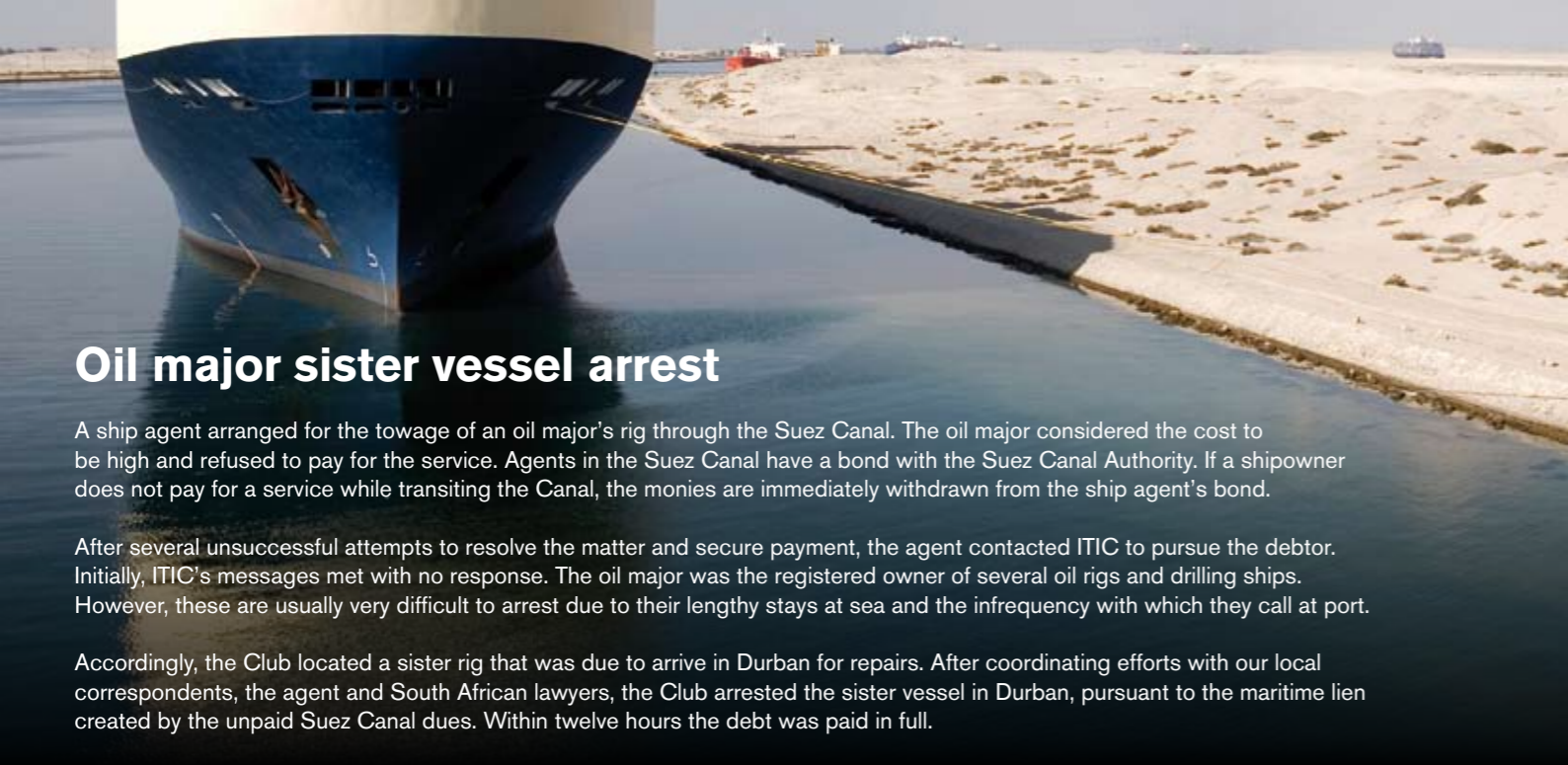
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## International debt collection

**ITIC's Members often provide services to foreign companies who are sometimes totally unknown to them. When left with a debt from such a company, obtaining payment can be extremely difficult, particularly in the current economic climate. An optional benefit that ITIC offers to its Members is a comprehensive debt collection cover. ITIC's staff has many years' experience in the field of international debt collection and will take over the collection of the debt and insure the costs of attempting to collect sums owed to you. Since 1992 ITIC has recovered nearly USD 100 million for its Members.**

As with professional indemnity insurance, ITIC's debt collection cover is only part of the answer. There is much that you can do to avoid debts arising in the first instance. In this edition of the Claims Review, we hope to demonstrate what ITIC does to assist you and what you can do to help yourselves.



## Oil major sister vessel arrest

A ship agent arranged for the towage of an oil major's rig through the Suez Canal. The oil major considered the cost to be high and refused to pay for the service. Agents in the Suez Canal have a bond with the Suez Canal Authority. If a shipowner does not pay for a service while transiting the Canal, the monies are immediately withdrawn from the ship agent's bond.

After several unsuccessful attempts to resolve the matter and secure payment, the agent contacted ITIC to pursue the debtor. Initially, ITIC's messages met with no response. The oil major was the registered owner of several oil rigs and drilling ships. However, these are usually very difficult to arrest due to their lengthy stays at sea and the infrequency with which they call at port.

Accordingly, the Club located a sister rig that was due to arrive in Durban for repairs. After coordinating efforts with our local correspondents, the agent and South African lawyers, the Club arrested the sister vessel in Durban, pursuant to the maritime lien created by the unpaid Suez Canal dues. Within twelve hours the debt was paid in full.

## Outstanding disbursement account

A ship agent had an unpaid disbursement account of USD 20,300 following a ship's call. The ship arrived on 27th October and departed 15th November 2007, during which time repairs were carried out in dry dock. The agent had been nominated by the charterer and appointed by the owner. Due to the unexpected repairs, the ship was unable to sail and the charterer declared her off-hire. The agent continued to act for the owner during this period. The owner paid for most of the services after receiving the disbursement account, but did not pay two of the invoices. The owner disputed the invoices without giving any reason.

ITIC wrote to the owner, who was based in Russia, but the correspondence went unanswered. Therefore, the Club requested the assistance of a local correspondent. After numerous calls with the owner, a meeting was arranged and the owner's "confusion" over the invoices was clarified. The owner then stalled once more with further questions; again they were clarified to their satisfaction and, finally, payment was received in full.



## Charterparty commission dispute involving two brokers

A ship broker who was a Member of ITIC (broker A) had been a co-broker in chartering a ship with another broker (broker B). Broker B was not a member of ITIC. During the negotiations, broker B added 2.5% commission into the charterparty, which already contained the industry-standard 2.5% commission clause, thus making 5% total commission payable. This was done without the consent of broker A. The owner did not object at this stage and the fixture was completed. However, once the brokers started invoicing for 5% commission the owner took exception and stated that he had only agreed to 2.5% commission for division, not 2.5% for each broker. The owner then stopped paying all commission. The brokers both stated that 5% in total was agreed in the charterparty, even though it was not the standard amount. The brokers stated that if it was not paid, they would have no option but to commence legal proceedings.

As no further commission payments were made, broker B commenced arbitration proceedings and asked broker A if he wanted to be joined in. ITIC advised that we were happy to support broker A if he wanted to become a co-claimant. Broker A then decided to become a party to the proceedings.

A lawyer was retained to represent both brokers. They proceeded to arrest the owner's ship in New Zealand for security in the arbitration proceedings and security was awarded. The arbitration proceedings commenced and progressed very slowly over a number of years. Broker A was always keen to settle the matter, as he was always happy with 2.5% for division. The owner refused to settle and accused broker B of dishonest behaviour throughout the fixture. As the matter approached a hearing in London, broker A repeated his preference to settle the matter, rather than having to attend a hearing. On this basis, the Club managed to negotiate a settlement on behalf of broker A, for the 1.25% commission he was initially expecting. Broker B requested his own settlement.

## Sale & purchase commission dispute

Two shipbrokers were involved in a sale and purchase of two ships, one acting for the buyer, the other for the seller.

The commission agreed on delivery of each ship was to be USD 250,000 per broker, considerably less than the industry standard of 1% of the sale price. However, prior to the delivery of the first ship the seller indicated that he would not pay any commission to either broker due to a "lack of service."

The brokers reported the matter to ITIC and the Club's investigation revealed that they were cut out of negotiations at a late stage because the buyer and seller were negotiating directly. This fact was brought to the seller's attention and ITIC advised him that, despite being cut out at a late stage, both brokers had been an "effective cause" of the sale and purchase and were entitled to be paid commission.

In response, the seller retained a lawyer in London who made an offer to settle the commissions at USD 125,000 per ship per broker.

In October, 2008 the first ship was delivered and the seller's offer to settle at USD125,000 was declined. The Club reiterated the "effective cause" argument and that the full commission agreed was due. Further, the Club threatened to pursue the industry standard of 1% commission if the seller did not meet his obligations.

Subsequently the lawyer made an increased offer to pay commissions of USD 300,000 per ship to be split between the brokers (i.e. USD150,000 per broker per ship). At the brokers' request, ITIC rejected the offer and insisted on receipt of the full commissions owed. In early November 2008, the lawyer advised that his client would be prepared to increase his last offer but first wanted a counter offer from the brokers. Again, acting on the brokers' instructions, ITIC responded saying that they would accept no further compromise because they had already accepted to act on a rate below the industry standard.

The seller's lawyer confirmed that his client would pay the full amount to each broker on the first ship, which had already been delivered, without prejudice to the brokers' right to claim full commission on the second ship, if it ever were to be delivered to the prospective buyer.



## Outstanding survey fees

A P&I club asked a marine surveyor to carry out a condition survey on a ship. The surveyor noted several deficiencies and, as a result, the P&I club requested the surveyor to conduct a follow-up survey. Although the P&I club copied the instructions to the shipowner, it was not clear whether the P&I club or the owner would be responsible for the survey fee. Unfortunately, the surveyor did not question this when accepting the instruction; he merely carried out the survey and sent his report to the P&I club. The invoice was sent to the owner. The owner did not pay and the surveyor asked ITIC to collect the debt. It became apparent that the owner was in financial difficulties and could not pay the surveyor's invoice. ITIC negotiated on behalf of the surveyor with the P&I club and the owner and, eventually, the invoice was paid.



## Outstanding invoices for a naval architect

A naval architect was instructed by a client to design a new rescue ship to be used off the coast of England. The naval architect designed the ship and it was built by a yard specified by the client.

After the client took delivery of the ship, he began to notice cracks appearing in the hull. The yard repaired the cracks but they continued to appear. Meanwhile, the client withheld payment from both the architect and the yard until the problem was finally corrected to his satisfaction. ITIC advised the naval architect's client that the invoice was still payable, despite the current dispute. However, the client refused to pay.

After long discussions with the client, ITIC instructed an expert naval architect to survey the vessel. The expert advised that the yard had not used the materials specified in the original designs. The hull had been created from a cheaper material which was far more prone to cracking than the material specified by the architect. With this evidence, ITIC demanded that the outstanding invoices be paid, as the matter was clearly a build issue and not a design one, and if the invoice was not paid, proceedings would be issued. The client then paid the outstanding fees.

# 10 hints on avoiding bad debts

## 1. ESTABLISH THE IDENTITY OF YOUR CLIENT BEFORE YOU ACT

Ship agents:

- Have you been appointed by the charterer to be the owner's agent?
- Is your principal a well known ship manager, or the manager for a less well known shipowner?

Ship brokers:

- Who is your principal? Is it the owner, charterer or an intermediate broker?

Surveyors, consultants and architects

- Be clear who has appointed you and who will be paying – owner, charterer, P&I Club, underwriter. Do not make assumptions and if in doubt clarify with the appointing party.

Do not accept work without knowing who your client is and who will be paying.

## 2. GET FULL DETAILS OF YOUR CLIENT - NAME, ADDRESS, TELEPHONE, FAX, EMAIL, BANK ACCOUNT

- Double check via the internet if necessary.

## 3. CHECK OUT YOUR CLIENT WITH ITIC.

- ITIC is asked to collect debts from thousands of companies and often knows who is failing to pay.

## 4. IF YOU ACT FOR MORE THAN ONE CLIENT

- Make sure you get confirmation in writing who will pay for each service.

## 5. SHIP AGENTS - GET ADVANCE FUNDS

- If the principal fails to remit advance funds, or only remits part of the funds, check with ITIC as we may already be pursuing debts owed by the same company.

## 6. SHIP BROKERS - CHOOSE CAREFULLY WHO WILL PAY YOUR COMMISSION

- Unless the charterer is substantial (e.g. an oil major or large trading house) it is usually best to leave the responsibility for paying commission with the owner (who has the arrestable asset).

## 7. DO NOT CONTINUE TO ACT WHEN DEBTS ARE MOUNTING

- Especially if your client has already broken promises of payment.

## 8. ACTING FOR CHARTERERS? BE ESPECIALLY VIGILANT

- Only a few jurisdictions recognise charterers' debts as a maritime lien against the ship and it is often difficult to trace charterers' assets.

## 9. MAKE YOUR AGENCY STATUS CLEAR

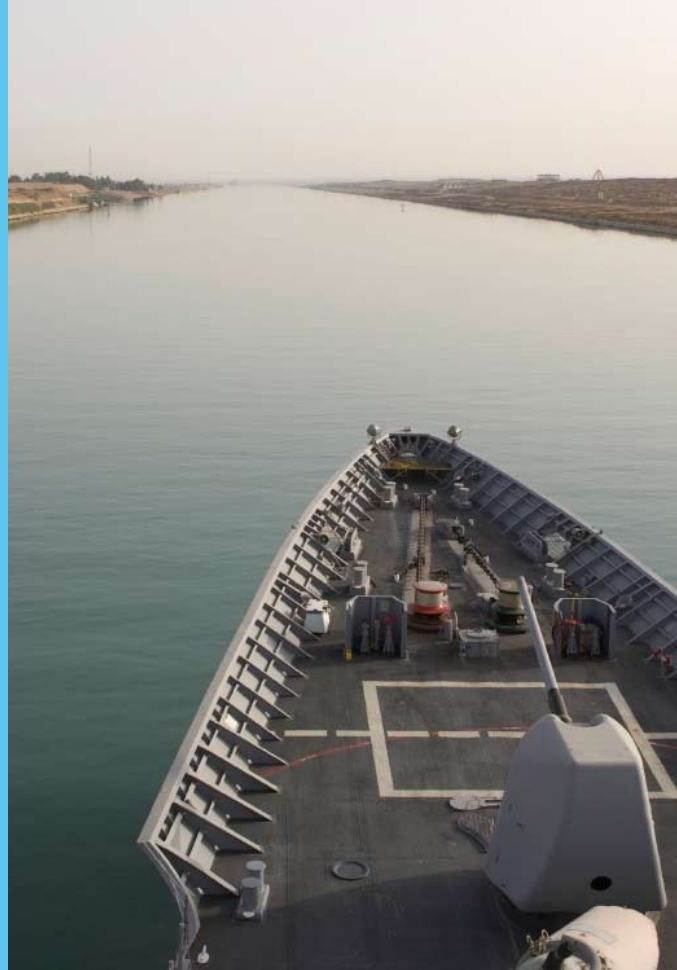
- Sign off "as agent only" when ordering goods and services if you are a ship agent, broker or manager. Otherwise, you could be liable to pay the suppliers. For further information, see ITIC Circular 02/08.

## 10. DO NOT ACCEPT INVOICES FROM VENDORS IN YOUR NAME

- Invoices should be addressed to "Master/owners/charterers c/o agent"

## IF IN DOUBT, CHECK WITH ITIC.

Our database is extensive.



## Successful Rule B attachment

A ship agent in Egypt received a distress call from an owner, stating that his ship had lost power and needed to be towed into harbour. The Egyptian navy had to provide the rescue service. In order for the navy to assist the stricken ship, the agent was forced to sign documents agreeing to be responsible for its fees. As the agent had no choice, he signed the documents.

The navy proceeded to the last reported location of the stricken ship, but it was nowhere to be seen. Eventually, the agent made contact and learned that the ship had managed to start the engines, and, on that basis, it had sailed. The agent was advised that there were outstanding fees owed to the Egyptian navy, but the owner refused to pay them. The agent attempted to obtain payment but without success.

ITIC looked at the possibility of arresting the ship, but, unfortunately, it did not trade in any favourable arrest jurisdictions. Therefore, the Club attempted a Rule B attachment against the owners in New York. Within a relatively short time, ITIC had managed to attach roughly half of the outstanding debt (around USD25,000). It was then discovered that the owners were on the verge of bankruptcy, and on that basis, the sum attached was reluctantly accepted in full and final settlement.