



SPECIALIST
PROFESSIONAL
INDEMNITY
INSURANCE

Claims review³⁶

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Off duty messages

It was the weekend and a member of a tanker broker's operations staff was not on duty. A message was received on their phone, which was linked to their individual email address.

The email was sent by a colleague in a different office for forwarding to the owners. The message was an important instruction regarding the amount of cargo to be loaded. Although the operations person saw the message they assumed that it had also been addressed to the general operations email address and would be dealt with by a colleague who was on duty. They therefore took no action. Unfortunately, the message was only addressed to their individual email address and the message was not passed on.

The reason for the revised instruction was that the charterer wanted to change the discharge port rotation to avoid severe congestion at what was originally scheduled to be the first port. This revised rotation would require a reduction in the vessel's draft to enable her discharge at what would now be the first port. The message was not passed on and the wrong amount of cargo was loaded. There was no option but to remain with the original rotation and demurrage was incurred. This was passed onto the broker who was reimbursed by ITIC.

A large number of claims caused by messages not being forwarded involve communications between different offices of the same broking company. Ensure that you have systems in place to prevent similar errors occurring in your business.



February is the shortest month

Ship broker fixed a vessel for an initial period of 3 months with subsequent optional periods of 3 months. The optional periods were declarable 30 days prior to expiry of the preceding period. The charterer was a regular client of the broker and the broker kept track of such options for them. Unfortunately when counting back to calculate when the notice was due the broker overlooked the effect of February only having 28 days. The notice was given late.

The owner had the right to reject the option and either ask the charterer to pay more or fix the vessel elsewhere. On this occasion the owners however waived their rights and continued the fixture at the existing rate.

ITIC sees many claims which involve time – whether it be calculating time, or missing time bars. You should ensure that you have systems in place to avoid being involved in these types of dispute.

An underestimated letter of guarantee

A South American port agent acted for a ship that discharged a bulk cargo at his port. There was a cargo shortage in an amount that exceeded the customs allowance, which meant that there would be customs duty and possibly a fine to pay. As is quite common in South America under local law the agent has a joint and several liability with the carrier for customs claims. Therefore, before the ship sailed, the agent took the precaution of obtaining a letter of guarantee from the ship owner's P&I Club. In due course, the customs authorities imposed customs claims in the amount of US\$ 113,250. The P&I Club appointed lawyers to defend the customs

claim, but lost in court some six years later. In the meantime the ship had been sold, and the P&I Club therefore disinstructed the lawyer and was only willing to contribute the amount of the letter of guarantee to the settlement. Unfortunately, the agent had underestimated the potential claim, and had only obtained a letter of guarantee for US\$ 63,000. In view of the lengthy legal proceedings, the customs authorities had also added interest of US\$ 43,314. This meant that the agent was found liable for the additional US\$ 50,250 not covered by the P&I Club letter of guarantee plus the interest - a total of US\$ 93,564. This amount was reimbursed by ITIC.

Jack-up barge punches through sandy bottom

In 2007, an offshore consultant performed a site assessment for a jack-up crane barge. The site was known to have some inherent difficulties for jack-up operations due to the underlying layer of soft clay which could potentially lead to a “punch-through” of the one of the jack-up’s legs.

The offshore consultant's report clearly highlighted this hazard. Ten days after the site assessment the barge went onsite and suffered a punch-through. The legs of the barge penetrated due to the effects of scour. In 2008 the owner of the jack-up barge brought a claim of US\$ 1.75 million against the consultant, arguing the consultant did not consider the effects of scour.

The claim was rejected on the basis that (a) the report clearly showed there was a danger of punch through, (b) the barge had been shifted away from the site which had been assessed, (c) at that site the owner had failed to carry out proper pre-loading checks, particularly in relation to the danger of a punch-through, and (d) in the scope of work the consultant was never asked to consider the effects of scour.

The consultant's position was considerably strengthened by a detailed scope of work and a well written report. ITIC often deals with claims in which a consultant is exposed to a claim because one of these documents is insufficiently clear.

The forgotten tug costs

A Scandinavian port agent was asked by the owners of a ship to provide a proforma disbursement account for a call at their port. When the final disbursement account was sent to the owners, they questioned the fact that it included a charge of US\$ 17,500 for tugs that had not been part of the proforma disbursement account. The original proforma disbursement account was used by the owners when calculating the rate required for the fixture, which meant that the owners had not allowed for the tug charges. The owners claimed the tug charges from the port agent. Although the owners were regular callers at the port and ought to have realised that tugs were required, they claimed to have only read the bottom line when negotiating the fixture and the agent's omission had therefore caused them a loss.

Employment terms

A commercial manager fixed a ship that had been under his management for several years for a project voyage to Finland. After the fixture had been concluded, the owners objected to the fixture as the vessel did not have a contract with the International Transport Federation (ITF) as required by Finnish authorities for all vessels entering Finnish waters.

Attempts were made to replace the vessel with another, or to cancel the contract, but the charterer advised that his losses would be substantial and would be claimed from owners. In order to mitigate potential losses the owners entered into an ITF contract and claimed the additional costs of US\$ 88,000 from the commercial manager.

An unacceptable tanker

A pool manager misdescribed a tanker as being acceptable to a specific oil major, even though he had received an email from the head owners prior to fixing that stated she had been rejected by them. This email was overlooked by the pool manager when the tanker was fixed for a spot voyage to load ULSD (ultra low sulphur diesel).

The fixture recap contained a clause stating "TO THE BEST OF OWNER'S KNOWLEDGE AT THE TIME OF FIXING, VESSEL IS NOT UNACCEPTABLE TO

FOLLOWING OIL MAJORS:" The list referred to a number of companies but did not include the specific oil major. The pool manager had mentioned during negotiations that in their view the tanker should be acceptable to that specific oil major since it was not excluded.

The charterers could not sell the cargo and had no other option than to put it into storage. They claimed US\$ 250,000 in damages. Their claim was settled by the pool manager, who was reimbursed by ITIC.



Towing trouble

A ferry operating in North America was due to be towed to a shipyard to undergo a refit. A marine surveyor was engaged by the shipyard to undertake a "fit for tow" survey and provide a certificate of approval confirming that the towage arrangements as between the tug and the ferry were satisfactory. The marine surveyor completed his survey and issued the certificate of approval. Three days later, during the tow, the ferry took on water and sustained significant damage to her main machinery compartment.

The owners of the vessel brought proceedings against the shipyard, the tug company and the marine surveyor for repair costs of US\$ 750,000. The owners alleged that the

surveyor had been negligent in confirming that all watertight openings were closed, whereas expert evidence suggested that water had entered the vessel via open air vents. The surveyor's position was that these air vents were a rarity, that it was outside the scope of the survey to inspect these and that liability should fall on the company undertaking the tow.

A mediation took place at which the owners acknowledged contributory negligence on their part and agreed to reduce their claim to US\$ 500,000. All three defendants, including the marine surveyor, contributed to a settlement in this amount.

A floating but listing restaurant

A naval architect was appointed to design a barge, that was intended to be used as a floating restaurant. There were stability issues stemming from the fact that the architect had failed to take into account the weight of the vessel's mooring system and access footbridge, and this led to a visible list.

The cost of the necessary repair provided by the barge owner came to €25,000, which the architect felt was fair and reasonable, and that the suggested repair would correct the barge's list.

The repairs were duly carried out at the architect's expense, which was reimbursed by ITIC.

A protected password

The clearance of import containers discharged at a Saudi Arabian port was delayed by two months due to the local ship agent's inability to submit the import manifest in respect of the containers and cargo to the Saudi customs authority via their SAUDI ELECTRONIC DATA INFORMATION (SEDI) system.

The agent was unable to input details of the cargo into the SEDI system because only one of their employees had access to this system via a unique password, and this employee had left the company.

When the employee left the company he had handed details of the password to the HR department, who had misplaced it, thereby causing the delay.

The delay in delivery resulted in additional port storage costs of almost US\$ 30,000. ITIC reimbursed this amount.

Not a negligent design

A Canadian naval architect contracted to provide design advice for the modification to a refrigeration system in the refrigeration-compressor room of a fishing vessel.

The modifications were completed by a local yard, but unfortunately the vessel had to make several unscheduled returns to port because the refrigeration system was not working correctly and modification/repairs were urgently required. The owner of the fishing vessel alleged that over an 18 month period the failure of the refrigeration system had caused lost fishing time, and a resulting loss

of profit of CA\$ 1,500,000, plus rectification costs of CA\$ 350,000. The owner alleged that the loss was due to both poor design and failure to properly perform and supervise the work. A local lawyer was appointed and instructed to file for discontinuance on behalf of the naval architect on the basis that any faults in the refrigeration system resulted from the installation and the failure of the project manager to oversee the work, and not from the design. This was accepted and the naval architect was successfully removed from the proceedings, but had to bear his own costs of CA\$ 40,346, which were reimbursed by ITIC.



New agency appointment agreement

FONASBA and BIMCO have recently published a new agreement for use by ship agents. The agreement is intended to cover one-off port calls and sets out the parties' obligations in a short and simple way. ITIC's claims director, Andrew Jamieson, was a member of the committee that produced the document. At a webinar publicising the new agreement, Andrew commented that while many agency appointments were casual and concluded either verbally or more usually by a brief exchange of emails ITIC had seen owners imposing written terms.



The difficulty with these documents is that they often were adapted from general service provider agreements and so did not deal with the specific issues of a port call. Alternatively, they were unreasonably onerous for the ship agent. The new agreement, which is the first to specifically address one-off port calls, was drafted with input from both ship agents and owners. It therefore provides a balanced approach to this type of business.

The agreement wording can be downloaded from ITIC's website: <https://www.itic-insure.com/knowledge-zone/article/itic-circular-fonasba-and-bimco-launch-new-agency-appointment-agreement-136763/>

New Protection from unexpected financial losses

Ship agents can predict their financial exposure to the usual costs of a port call but there are occasions when unexpected developments mean the final disbursement account is far greater than could have been anticipated.

Ultimately the agent has to settle their commercial debts but if the additional expenses cannot be recovered from the principal the agent can be left with a large bad debt. To protect its members from being left to pay unanticipated port disbursements ITIC are offering an additional cover.

What is covered?

Unanticipated port disbursements are disbursements which could not have been reasonably anticipated before the vessels call or which were increased by circumstances which could not have been anticipated.

How it works

The unanticipated port disbursements endorsement works in conjunction with your "Rule 10, additional legal costs and debt collection" cover to make sure you are protected from unforeseen debts. If you are left with an unpaid disbursement account ITIC will pursue these as a debt collection. If a successful recovery action isn't a realistic prospect ITIC will cover the amount of **unanticipated port disbursements**.

Claims examples:

Additional tugs

Due to adverse weather conditions the port required a ship under your agency to have an additional tug when leaving the berth. This situation was not anticipated and so the costs were not included in the proforma disbursement account. The ship owner claims the additional tug was not necessary and ignores your requests for payment.

Berthing costs

Cargo operations for a ship discharging project cargo were due to take 6 days. However, due to the complexity of the project the vessel was in port for 26 days. The port subsequently raised an additional invoice for 20 days. The agent was nominated by the charterers. Liability for the costs was disputed by the owners and charterers.

Seafarer needing repatriation

A seafarer has an emergency and needs to be sent home immediately. The ship agent arranges for taxis, visas and airfares. Despite your requests the ship owner declines to pay the amount you have incurred on behalf of their crew.

In all these cases ITIC will attempt to get your money from the debtor but this is not always possible – The responsible party may go into liquidation, sometimes debtors are based in jurisdictions where it is simply not possible to economically pursue an action or any one of a number of reasons can frustrate attempts to recover the money. Historically that has been the end of the matter and the agent is left with a bad debt. However, if you purchase ITIC's **unanticipated port disbursements** endorsement then **ITIC will cover those losses**.



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