

Claims Review

Email fraud

A ship agent received an e-mail from who they thought was their principal, but the agent had failed to notice that the e-mail address was slightly different to the correct address. The e-mail notified the agent that the bank details of the principal had changed and that funds were to be sent to the new bank account. The new bank account was in a different country with no apparent link to the principal.

The ship agent failed to carry out any checks and duly transferred US\$ 53,000 to the new bank account.

Over time it became apparent that the principal had not received the funds and that the ship agent had been the victim of fraud and paid the funds into the wrong account. ITIC reimbursed the agent for the full amount.

ITIC has seen a large number of these frauds. The majority of victims and intended victims have been ship brokers and ship agents but ITIC has received reports from members carrying out a wide range of activities.

Anyone making a payment could be the target of fraudsters. Any message purporting to change bank account details should be regarded with suspicion.

ITIC reminds all members when transferring funds to use the telephone to check the account details with a trusted representative at the recipient's office. Simple checks will defeat the fraudsters.



Sorry your cargo has arrived

A ship agent received a spreadsheet from their principal showing the ship on which cargoes had been originally loaded in one column and which of two subsequent feeder ships that would be used to carry the cargo to the final discharge port in another column. The latter two ships were scheduled to arrive a week apart.

The agent misread the spreadsheet and mistakenly notified some of the consignees of the wrong arrival date for their cargo. This error was not noticed until after the first ship had arrived, meaning that some of the consignees had not presented the required clearance documents, believing that their cargo was not due to arrive for another week.

The shipping line held the ship agent responsible for the extra charges received from the terminal due to the delay. The full claim amount of US\$ 9,500 was paid by ITIC.

Another victim

A ship broker received a freight invoice via email from owners for US\$ 120,000. The bank account detailed in the invoice was the same account as that which had previously been used by owners with the same charterer. Several hours later a further e-mail was received, apparently, from the owner to advise of a change to the bank account details on the invoice. The email stated that the originally detailed bank account was "no longer available to receive payment due to an internal audit that was beginning tomorrow".

The message was not in fact from the genuine owners, but from an e-mail address which looked very similar. A fraudster had created an e-mail address replacing full stops in the company name with dashes. In addition to a revised invoice, the fraudster provided a fake "Account Registration Form" which reported that the account details were true.

The broker failed to notice the change in the e-mail address and accepted the account evidence and explanation as being genuine. The broker passed on the invoice as "received from owners". It was only after the owners enquired as to the whereabouts of the freight that the scam was discovered.

The charterer had to pay the freight again and claimed from the broker for negligence in failing to notice the change and for failing to adequately check that the details were correct. The broker had to reimburse the charterer for the freight that they had to pay for a second time. ITIC reimbursed the broker.

There is a dedicated fraud section on ITIC's website, which contains advice and information relating to potentially fraudulent activity:
<https://www.itic-insure.com/knowledge/circulars/fraud-circulars/>

Clearance confusion

Commercial managers arranged two consecutive voyages.

At the conclusion of the first voyage the ship discharged at the outer limit of the port and immediately returned to the load port in order to lift the next cargo. When the ship arrived at the load port the managers discovered the quick turn round had caused a problem.

As the vessel discharged at outer port limits, she was not registered as having entered the port and therefore was not cleared from the port on completion. On arrival at the load port for the next cargo, she was in breach of local regulations as she could not show evidence that she had been cleared at the end of her previous call.

The ship was delayed by the local authorities. The owners claimed damages from the commercial managers due to the delay. **After negotiations it was agreed that the managers would pay US\$ 50,000 which was reimbursed by ITIC.**



Mislabelling of machinery

A marine surveyor carried out a pre-shipment inspection of two consignments of trucks, cranes and other equipment. The consignments were due to be sent to two different ports in South America. As part of the inspection the marine surveyor was required to ensure that every item was correctly labelled.

When the shipment of cargo arrived at the first port, Customs realised that the majority of the cargo had incorrect labelling. Some of the labels did not correspond to the correct chassis numbers on the vehicles and some of the labels referred to the wrong destination.

Customs seized the vehicles and equipment, resulting in the consignee having to hire replacement trucks for several months, whilst the issue was resolved. **It took over four months for the equipment to be released by Customs resulting in total claims against the marine surveyor for US\$ 68,260 which was paid by ITIC.**

Right to cancel

Ship brokers fixed a charter with the common laycan provision that if it appears to charterers that the ship's arrival at the loading port will be delayed charterers may require owners to say when they expect the ship to be ready to load. The clause goes on to provide that if the date provided by owners falls after the cancelling date the charterers have the option of cancelling the charter but must do so within ninety-six hours of receipt of the notice from owners. If the charterers don't cancel then the new cancelling date will be as notified by the owners.

Owners sent a message which showed they would be late. Without consulting the charterers the brokers sent a message "please guide what will happen with owners' intention of laycan extension."

Owners replied with a laycan extension of two days. The brokers passed the laycan extension request to the charterers who did not respond. When the original laycan expired charterers said they were cancelling the fixture but owners claimed that, since they had not responded, charterers were deemed to accept the new laytime. The charterers then turned on the brokers saying that they had sent the message without authority.

Ultimately the parties reached a commercial settlement to which the brokers contributed US\$ 25,000 which was covered by ITIC.

Avoidable appointment of armed guards

A ship manager was managing a tanker entering West African waters. The manager believed the terms of the charterparty provided that armed guards were to be appointed at the charterer's expense. The manager duly appointed the guards for the voyage at a cost of US\$ 170,000.

The charterers refused to pay the invoice. The terms of the charterparty did have provisions relating to the appointment of armed guards but their deployment was not mandatory. In addition, the charterparty provided that the charterers were only liable for up to US\$ 20,000 of any costs. The charterers offered to pay that US\$ 20,000.

The owners demanded the managers pay the shortfall. They pointed out that they had sent the manager voyage orders stating that the decision to appoint armed guards was for the owner to make. They had in fact only appointed armed guards for one out of the last ten calls to the area and on that occasion the charterparty required charterers to pay the security bill in full.

ITIC reimbursed the full claim of US\$ 150,000. ITIC has seen a number of claims caused by ship brokers and managers acting on what they recall a charterparty says as opposed to checking what it actually says.

A draft dilemma

A ship was proceeding to the discharge port. The agent at the discharge port advised the shipper that the maximum draft in was 40ft and as this vessel was just under 41ft she made an interim call to unload some cargo.

The agent subsequently received a claim from the shippers. They alleged the information was incorrect and that vessels with drafts in excess of 40ft could still call at the port but with two pilots on-board instead of one. As a result, the shipper said the agent should have been aware of this possibility and claimed US\$ 250,000 for the costs of the wasted call and transporting the excess cargo.

The agent could not find the provision on the local pilots' association's website which gave maximum draft of 40ft. They asked the shipper where they got the information from. The shipper pointed out there was

a link on the agent's own website to an article stating that vessels over 40ft can call providing there are two pilots on board. The agent contacted the local pilots association who confirmed it was possible to call with a draft of 41ft and that the information was on their website, just not easy to find. The agents had incorporated standard trading conditions which limited their liability to 10 times their agency fee. This amounted to \$ 36,500. This sum was accepted by the shipper and ITIC reimbursed the agent.

This claim shows how important it is for terms and conditions to be incorporated into all business dealings. ITIC's terms and conditions, and guidelines for incorporating these, can be found on the website: <https://www.itic-insure.com/knowledge/standard-trading-conditions/standard-trading-conditions-indemnity-wording/>



Declaration duplication

A South American ship agent declared 47 transshipment cargoes to Customs. The declaration was made electronically and referred to a specific manifest. Less than a week later the agent mistakenly entered declarations for the same cargoes but referenced a different manifest.

Customs subsequently issued a fine against the agent for US\$ 39,885 which was reimbursed by ITIC.

A bogus bill

A liner agent released a cargo of ceramics that had been shipped from the Far East when presented with what they assumed was the original bill of lading. It later transpired that the bill of lading was a forgery.

The shipper issued legal proceedings against the line who had a strict liability under local law for not releasing the cargo against a genuine bill of lading. The total amount of the claim amounted to US\$ 25,000. The line claimed an indemnity from their agent. The question was had the agent been negligent. The principle behind the agent's liability in this type of case is to consider if an ordinary prudent agent would have noticed the fraud.

The bill of lading presented was almost identical to the genuine one except for one detail that was missing on the forgery. Arguably the agent could have identified this as a fake bill of lading, but given how similar to the original it looked, this would have been difficult. In the circumstances a settlement was reached with the line and the agent contributed US\$ 15,000. ITIC reimbursed the agent.

The main source of ship agency claims seen by ITIC are those which involve bills of lading. ITIC has a bills of lading e-learning seminar, which informs you of areas of risk relating to bills of lading, so that you can prevent a loss occurring in your business. You can watch the video here: <https://www.itic-insure.com/knowledge/e-learning/bills-of-lading/>

Check what's required by class

A yacht broker and manager acted for a client who wanted to purchase a yacht for family use but which he would also be able to charter out commercially.

The client became interested in a yacht that was registered solely as a private vessel. It was appreciated that the yacht would need to obtain commercial registration status and that work would have to be undertaken to bring the yacht into compliance with requirements for commercial registration.

The broker arranged pre-purchase surveys to be carried out and obtained advice in relation to the flagging and commercial compliance. Although the survey and advice was obtained from third parties the broker provided a summary and added their own comments. The advice included a change of registry but the yacht would remain with the same classification society.

The yacht was purchased and a written management agreement entered into covering the managing and supervising the conversion.

The works on the yacht proved more substantial than expected. Class disagreed with Flag about what was required. In addition there were works that had not been identified in the pre-purchase surveys. As a result, time and costs increased. The yacht management agreement was terminated and the owner, subsequently, commenced an arbitration. They claimed US\$ 6.7 million.

The claims submissions contained two areas of complaint - one in relation to the work as a yacht broker and one as a yacht manager.

The broking complaint alleged that negligence in respect of investigations into obtaining commercial registration with the ship registry and the consequential class society requirements. The owners alleged that, as a result of being misled, they paid too much for the yacht and wasted money on the conversion works. A difficulty faced by the broker was that they had not checked the position with the Classification Society before the vessel had been purchased.

The yacht management complaint alleged that the costs of the refit vastly exceeded the original budget and that the overrun in the refit works lead to a substantial loss of charter income over the summer season. The amount claimed under this head was US\$ 2.6m.

The yacht management contract contained a limit of liability of US\$ 1.4m. The principal concern was that there was a real prospect that the tribunal would feel that there had been a lack of planning when managing the refit.

The parties held a mediation in July 2018 and although settlement was not reached on the day the parties continued negotiations and the claim was settled for US\$ 2.25m, which was paid by ITIC.

An e-mail error

A charterparty was arranged by a ship broker which included a clause stating that "charterers to declare 15 day laycan latest 30 days prior to the opening day of the first layday."

In early July the charterer e-mailed the ship broker advising that they were nominating the laycan as the first half of August. The broker overlooked this e-mail and a subsequent e-mail sent by the charterer three days later was also missed.

The broker finally forwarded the laycan nomination to the owners at the end of July, which was too late. The owners advised that they were unable to provide a ship at the nominated loadport within the first 15 days of August at the freight rate agreed in the charterparty. They advised that they had another ship which could load the cargo, but as the market had risen since the fixture was made, this would be at an additional cost to the charterers of approximately US\$ 220,000. The broker made inquiries in the market and determined that it would not be possible to fix with another owner for less than the US\$ 220,000, so the charterers decided to fix on this basis and subsequently pursued a claim for this loss against the broker.

It was clear that the charterers' loss of US\$ 220,000 had been caused by the failure of the broker to pass the laycan declaration on to the owners. The broker was liable to reimburse the charterers for the additional costs they incurred, and ITIC reimbursed the broker.

Passport perils

A cruise ship called at one of the Canary Islands. Prior to the ship's arrival, the agent provided the Spanish border authorities with a passenger list indicating 15 South American nationals would be among those landing.

According to EU regulations, non-EU nationals must present themselves at the border post to obtain the necessary entry clearance. Only 1 of the 15 Brazilian passengers went through the correct procedure at Spanish border control.

The Spanish Interior Ministry subsequently pursued the agent under legislation that provides it is an offence for the "parties

responsible for the transport" to bring foreigners into Spanish territory without having verified the validity of their transport documents and ensuring that landing procedures were complied with.

As the Brazilian passengers had not presented their passports to border control, there had been, prima facie, a breach of this regulation. The agent faced a potential fine of up to €140,000 (€10,000 per passenger). Lawyers were instructed to defend the agent. Ultimately the Spanish Authorities did not impose penalties on the agent who undertook to avoid future breaches of the regulation.

The agent incurred legal costs of US\$ 7,500 for which they were reimbursed by ITIC.

ITIC has frequently assisted ship agents exposed to the possibility of fines for breaches of immigration regulations. This claim related to passengers but often the cases involve crew members disembarking without complying with the necessary formalities. Many of these claims should be the responsibility of the owners but immigration authorities frequently target the agent long after the ship has sailed.

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