

Claims Review



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ITIC
IS MANAGED
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Welcome to the Autumn edition of ITIC's Claims Review. Since the last edition we all seem to have been subject to various forms of lockdowns and travel restrictions, with many of us working from our homes. This may have been difficult at first but we seem to have become used to it now. In fact, ITIC has recently held its second board meeting since March via video conference.

The Claims Review provides a selection of cases recently handled by ITIC. We hope that these case histories will be of interest to members and will also help you to identify potential problems in order to avoid these types of situations occurring in your businesses.

In order to support the membership during these unprecedented times ITIC has issued a number of loss prevention publications. There is a dedicated Coronavirus resources page on the website <https://www.itic-insure.com/knowledge/covid-19-information-and-resources>. This page contains circulars for ship managers, shipbrokers and agents, along with a Coronavirus loss prevention business checklist: <https://www.itic-insure.com/knowledge/itic-circular-coronavirus-loss-prevention-checklist-152100>.

We have also seen an increase in fraud issues and would refer you to ITIC's website's fraud loss prevention area: <https://www.itic-insure.com/knowledge/fraud>.

In the last edition of the Claims Review, we introduced an "ask the editor" section and would like to extend our thanks to those of you who submitted questions. Please send any questions that you may have to askeditorCR@thomasmiller.com

The Editor



Costly courtesy

An ITIC member acted as a marine consultant, stowage and lashing planning advisor for the stowage of steel coils.

The marine consultant was appointed by a principal for whom they had worked with for many years and enjoyed a very good working relationship.

Due to their good relationship, upon only the verbal instruction of the principal, the marine consultant arranged and signed off on the stowage of the coils on an "athwartship" basis (at right angles to the centre line of the ship) as this form of stowage increased the cargo intake. It could be justified with additional lashing due to the way the hold was constructed.

The ship encountered very heavy seas and ultimately the stow collapsed resulting in a claim in excess of US\$1.5m. The consultant was subsequently held responsible by the insurer of their principal, as part of a recovery action.

Unfortunately, there was no written confirmation of the instructions from the principal indicating they had agreed to an athwartship stow. There were however various other facts which were in the marine consultant's favour to defend the case, including a limitation of liability clause in their terms and conditions.

ITIC supported their defence, which included obtaining independent third party advice to support the position for stowing the cargo athwartship.

After five years of investigations and claims negotiations ITIC managed to successfully defend the marine consultant, making a modest claim contribution of EUR 50,000.

This is a good example that shows even if your most trusted clients do not intend to make a claim against you, their insurers or another third party may do so. You should always get instructions in writing. If you do not, your "favour" can become very costly.

Big trouble in China



Fraud warning

A ship manager oversaw the repairs of a ship at a shipyard in China. On August 10th 2018 the ship manager received an email from “Azula” at the shipyard concerning the first payment due for the repairs.

The details provided by “Azula” were the ones that had been previously used. The payment was scheduled for 14th August.

However, on 13th August a further e-mail was received from “Azula” advising that due to problems caused by Iranian customers the management board had requested another payment routing for the required first payment. However, this was a fake “Azula” as part of the e-mail address had been changed from “irn” to “im”. This was not noticed.

As a result the first payment was stopped whilst the new bank details were awaited. A new fraudulent invoice was received on the same template as the original from the fake Azula. Trusting the new invoice, payment was made on 14th August 2018.

On 16th August a statement was received from the fake Azula/hackers confirming the above payment along with the technical inspector’s signature. Subsequent

investigations would show that the hackers had full access to both the shipyard’s and manager’s systems.

On 22nd August an invoice was sent by the real Azula which the hackers intercepted and issued a replacement fake invoice with their fraudulent bank details.

In total two payments were made to the hackers in the sum of US\$ 500,000. As the shipyard had not received payment, they claimed this sum from the owners. ITIC was able to negotiate a reduction with the yard to US\$ 360,000 due to the fact they were partly at fault for allowing the hackers access to their system. This sum was covered by ITIC.

As always, any change to bank details should be a red flag in terms of spotting potential frauds and you MUST verify by using the phone. Do not use the phone number on the email correspondence, as it may be that of the fraudsters.

Digital deception

A shipbroker realised they had remitted US\$ 360,000 of freight by mistake to an incorrect party.

There had been some correspondence between the shipbroker and the owner regarding the bank accounts, which had been verified by a phone call. However, a final e-mail arrived for the shipbroker, which had been generated by hackers. It used exactly the same language and phrases, which had been used by the principal and instructed a change of bank details.

The shipbroker realised, after the funds had been remitted that an “i” in the ship owner’s email address had been replaced by “l”.

Although they had spotted the error very soon after the money had left the shipbroker’s account and had immediately called the bank, the funds had already been transferred out by the hackers.

Once a payment has been remitted, it is exceptionally rare that the money will be recovered. Vigilance is key when remitting monies. Always check new and altered banking details on a verified phone number. A phone number on an e-mail from hackers will invariably be the hacker’s phone number.



ITIC has paid many claims where e-mails have been hacked and has produced loss prevention advice, which can be found in the dedicated fraud section of the website: <https://www.itic-insure.com/knowledge/fraud>. Members are urged to be vigilant.



Q&A with Robert Sniffen



Robert Sniffen, Director, sits down to chat with the Claims Review editor for the second in a regular interview series, where we get to know ITIC's claims handlers. In this interview, Robert outlines the most memorable claim he has handled and literally describes his pet hate... which is literally so annoying!

How long have you worked at ITIC?

I started working at ITIC in February 2001. I'm coming up to my 20th anniversary next year. I didn't realise I'd be spending it working from home.

How do you balance claims handling with your other roles and responsibilities?

It comes with experience and having a good IT system that helps manage your time efficiently. Also, we have a wealth of knowledge with our in-house dedicated claims team who are ALWAYS willing to assist.

What is the biggest challenge when it comes to claims?

Unclear initial notifications. On occasion we receive a claims notification which is just a string of e-mails and not very much explanation - which can be a challenge to decipher. Thankfully with ITIC's handy guide on how to make a claim (itic-insure.com/knowledge/how-to-make-a-claim/managing-a-claim), this challenge has been reduced.

What is the most memorable claim you have handled?

It is difficult to say as I have seen so many. There was one claim brought against a naval architect for personal injury. An individual was on board a yacht designed by ITIC's assured and claimed for personal injury when they fell inside the cabin. One major fact they left out was that the fall was during a New Year's Eve party where they had consumed many drinks!

Any life ambitions or future goals still to achieve?

Other than to fly into space, I would like to travel more and see more on this planet.

What is your favourite saying?

I don't really have a favourite saying, but I have been watching a lot of Star Wars with my children during lockdown - so, "do or do not, there is no try" - Yoda in The Empire Strikes Back.

What are your hobbies and favourite pastimes?

Pre-lockdown I enjoyed going to the gym. I have recently started playing golf (now lockdown is easing), as I have reached an age where playing basketball doesn't agree with my body, which is something I used to play at college. I also like to read, watch movies and spend time with my kids.

What is your favourite food?

I would eat pretty much all types of food, but if I had to pick one, Thai. There is a great place in Melbourne called Chin Chin.

What is your favourite film?

Too many to choose from, but it really depends on my mood. It could be The Shawshank Redemption, The Godfather or the Back to the Future Trilogy and Original Star Wars trilogy. I enjoy all types of genres except horror.

What is the last book you read or music you downloaded?

I am about to start reading The Shining (Stephen King), I have never seen the film (note my comment above!). I have plenty of room in my freezer if I get too scared. I'm not really listening to much music at the moment but have been heavily into podcasts. I can't recommend Off Menu enough, but also You're Dead To Me (history) and The Infinite Monkey Cage (science).

Any pet hates?

People who say "literally" all the time... but other than that, I am fairly relaxed about most things.

How are you finding working from home during this period of lockdown?

It was a challenge at first, but I got used to it quite quickly. My only issue has been my back, I do miss my stand up desk... and my colleagues of course.

Have you developed any new skills during lockdown?

No, although I am trying to cook more.

What do you miss the most about life pre-lockdown?

A cold pint of Guinness in a pub (any pub...!). And seeing members and insurance brokers. I am lucky with the areas of the world I am the account executive for and do miss travelling.

If you weren't working at ITIC, what would you be doing?

I had a dream when I was younger to be an architect. So maybe that, or into a science field.

Holiday hold up

A ship agent was notified by their principal that a ship would arrive at the port on 30th July. The ship agent allegedly notified the port and local customs of the impending arrival on 27th July. However, for reasons unknown, the customs office never received the notification of the arrival. The individual ship agent handling the matter then went on holiday and forgot to advise anyone else in the office of the ship's arrival or that customs approval was still outstanding.

Subsequently a follow up with customs was only carried out on 8th August when it was approved. However the ship had been held and delayed for a week. As a result demurrage was incurred.

You should try to have a system in place that allows colleagues' emails and work to be monitored whilst they are away, so nothing important is missed. Of course, such systems will not work on every occasion, but it is good practice to have a system in place. The total claim against the ship agent was US\$ 30,000 which was paid by ITIC.

Fruits but of the sea

A liner agent booked two containers for a shipping line, one with a cargo of bananas and one a cargo of shrimps, both for delivery to the same country.

The ship agent created delivery notes for both containers. However, they transposed the wrong release numbers on each of the delivery notes. A haulier came to pick up the container of bananas and when they entered the details into the terminal system it was rejected as the container number and release number did not correspond. The haulier then contacted his office who reviewed the port system to see what the correct container number should be for that release number.

The container number was clearly entered into the port system as being shrimp and not bananas. However, rather than contact the line for clarification, the haulier simply corrected the delivery note with a pen so it showed the container number for what should have been the bananas, but was actually shrimp. As a result, the wrong container was collected and the error was only noticed when the cargo of shrimp was delivered to a surprised fruit wholesaler. As the container had been opened without veterinarian inspection and the seal was broken the cargo needed to either be destroyed or exported back to the country of origin. Eventually, the cargo was sent back and a 30% value was received in a salvage sale.

The value of the cargo after the salvage was US\$ 205,000. The line settled with the cargo owner in full and sought

recovery against the liner agent for the mistake. ITIC agreed to reimburse the claim in full as long as the line assigned their rights of recovery against the haulage company. ITIC then brought a subrogated recovery against the haulage company.

The haulage company claimed they were acting as a forwarder. Under their national freight forwarding conditions a freight forwarder can limit their liability to SDR 50,000 (around US\$ 68,000); whereas if they were a carrier the limitation is SDR 8.33 per kilo, which would have been in excess of the claimed amount. The haulier put forward an offer of SDR 50,000 to settle the matter, which ITIC rejected. The matter was taken to court, where unfortunately although the haulier was found negligent, the court upheld they were a forwarder and therefore the limitation of SDR 50,000 applied. This decision was appealed and the appeal court overturned the original decision. The haulier was to be considered a carrier. Therefore the full claim, plus interest and costs was payable by the haulier. The total claim paid (and then recovered from the haulage company) was US\$ 205,000 in liability US\$ 135,000 in legal costs. The claim from notification to recovery took five years.

If a recovery can be made, it is worth doing so as the claim on the member's record will be reduced by the recovered amount.



Missed message

A ship agent received notification from their principal that the port of destination had issued new regulations specifying that ships carrying specific dangerous cargo would not be permitted to enter particular berths.

The principal instructed the ship agent to advise them if any shipper was to book dangerous cargo so that alternative arrangements could be made if necessary.

The ship agent accepted a booking for a shipment, unaware at the time of booking that the cargo contained dangerous goods as per the new regulations. Shortly after the booking was made the shipper sent the ship agent the details of the shipment which showed the cargo was indeed dangerous goods. However the agency staff member to whom the email was sent had since left the company. It appeared that his email address was not being monitored nor were his emails forwarded to a colleague. Therefore,

neither the ship agent nor the principal were aware that the shipment contained dangerous goods. The cargo was subsequently received at the wharf and accepted onto the ship by the master.

Once the ship was enroute the owner realised that the containers contained dangerous cargo and that they would face problems in the port of discharge. They decided to deviate to another port where the cargo could be transhipped onto a different ship calling at a berth in a port where the cargo could be accepted.

The principal brought a claim against the ship agent for US\$ 52,000, representing the additional costs incurred in deviating

and transhipping the cargo, in mitigation of higher costs which would have been incurred if the ship arrived with the dangerous goods on board.

It was accepted that the ship agent should have set up a system whereby emails sent to the addresses of former staff were seen, and the ship agent had clearly failed to advise their principal of the dangerous cargo as per the principal's instructions. Nevertheless, the master had also accepted the cargo without any objection.

The ship agent discussed the matter with their principal and with ITIC's approval agreed a settlement of US\$ 25,000, which ITIC reimbursed.

Carpetbaggers

A yacht manager was instructed by the owners to settle the fees of an artisan carpet maker who had renewed the interior carpet of a yacht. The owners liked the work and ordered some extra carpets.

The manager then received two invoices from the supplier – for the first job and the second. They registered them in their system and paid them out of the owner's funds. A day later a different person within the yacht manager's office asked the yacht's captain if they should proceed to pay the supplier for the work done. The captain authorised the payment. The yacht manager paid the supplier's invoices again but with a slightly different reference number. As a consequence of the erroneous

double entry of the invoice in the system, the supplier received the funds twice.

By the time the yacht manager realised the issue, the supplier had used the money to pay off some debts and did not have the funds to repay the owners. Furthermore, he then fell ill and was hospitalised. It became clear that the extra funds remitted would not be returned. Owners put pressure on the yacht manager to credit the additional money back to them.

The yacht manager had to pay the sum of EUR 90,000 back to the owners in respect of the loss they suffered. The yacht manager was reimbursed by ITIC.



WhatsApp woes

A shipbroker mistakenly understood that owners had agreed to discount the overage rate by 50%, meaning that cargo loaded above 66,000MT would be charged at US\$13.5 per MT instead of US\$27 per MT. This mistake arose when a message from the charterer was received, via a screenshot in WhatsApp, which appeared to contain the owner's consent to the proposal. However, all it actually contained was a copy of the message in which the charterers were asking the question of owners.

Charterers then proceeded to load an additional 2,940MT, believing that this would cost them US\$ 39,690. Owners maintained that they had never agreed to a discounted overage rate and therefore the full US\$ 79,380 was due.

To resolve the matter, the charterers paid the full freight amount but sought to recover US\$ 39,690 from the shipbroker on the basis that this was the amount that they had lead them to believe was due. The shipbroker settled the claim with the charterers which was reimbursed by ITIC.

Always be careful when receiving Whatsapp (or any chat app) messages – as screenshots can be used to make messages look different from their original intention.

Strange range

A shipbroker had previously arranged a fixture between the same principals with discharging in north China. The discharge range had been designated as 1-2 port(s) Qingdao-Dongying. The fixture had proceeded smoothly.

The charterer had a further cargo which the shipbroker was told was destined for Jinzhou. The shipbroker contacted the owners and agreed terms on the basis of the previous fixture. The agreement was made in a

hurry due to an approaching holiday. Unfortunately, the shipbroker failed to check if the intended port was in the previously agreed range - which it was not.

When voyage orders were passed through to the owners, they pointed out that the port was outside the agreed range. Furthermore, the owners did not wish to agree because Jinzhou is a potential ice port and their ship was not an ice class ship.

Ultimately the owners agreed that they would go to Jinzhou for an additional US\$ 25,000 freight and an additional clause in the fixture to fully protect the owners regarding the ice issue.

The shipbroker, with ITIC's agreement, accepted that they would indemnify the charterers. Fortunately when the ship arrived the port was ice free.

Unstable criteria

ITIC insured a naval architect in Australia, who was also insured as a surveyor for small commercial vessel coding approval on behalf of the Australian Maritime Safety Authority (AMSA).

The naval architect was appointed to design a fuel barge that was to carry 37,000 litres of fuel. The naval architect was experienced in designing small passenger vessels and applied the same simplified stability criteria to the barge as they would for passenger vessels. This did not take into account the fuel cells that had to be carried on the hull form.

A peculiarity in the AMSA coding system is that a surveyor can sign off their own stability calculations. Therefore, no third party verified them. When the shipyard carried out

a stability load test on the finished fuel barge there was excessive heeling. As a result the barge was re-rated and was only authorised to carry 11,000 litres, which was only 30% of the design criteria. The yard estimated that the cost to rectify the design mistake would be AU\$ 258,000.

ITIC appointed an independent surveyor to review the rectification costs and they were found to be fair and reasonable. ITIC therefore reimbursed the AU\$ 258,000.

Manifest mistake

A ship agent failed to manifest a cargo, which was a yacht, at the original port of loading. At the second port on the voyage the customs inspectors identified the error and seized the yacht.

The yacht's owners went to court to claim for either delivery of their cargo or damages for their loss in the sum of US\$ 500,000. Despite everyone's best efforts, the yacht remained in detention and the claim increased to US\$ 800,000.

Whilst the ship agent was not named directly in the claim by the consignee, the ship owner filed a separate claim against the ship agent requiring an indemnity of up to US\$ 980,000 (the US\$ 800,000 plus legal costs).

Initially settlement was offered to the consignee as per the value of the cargo which was US\$ 125,000. This was rejected. **Eventually, US\$ 250,000 was accepted by the consignee – a reduction of US\$ 550,000 on the claimed amount. The ship agent reimbursed the ship owner this sum, which was covered by ITIC.**

Buyer beware

A shipbroker was asked to assist a buyer to place a bid in a judicial auction. Before proceeding the shipbroker was asked what their fee would be. The shipbroker said "typically our fee is 1% of the sale price at auction but are willing to discuss". The buyer responded "if we buy the ship then 35% of your 1% is to be returned to us". The shipbroker agreed. The buyer's bid was successful in the auction. The shipbroker was entitled to commission of US\$ 75,000.

Although the shipbroker had forwarded the auction's "terms of sale" which stated that it was for buyers to pay commission, the buyer, who had not previously purchased a ship in a judicial auction, said they only agreed the commission on the basis that the shipbroker would be paid by the seller. Although they accepted that the shipbroker should be paid something for their work they offered a much smaller commission than what was truly owed. The shipbroker asked for ITIC's assistance.

Ultimately, a settlement was reached with the owner making a payment very close to the original commission agreement.

“It is a condition in ITIC policies for ship managers to be co-assured on the owners’ hull and P&I policies.”



Ask the Editor

In the last Claims Review we offered you the opportunity to “Ask the Editor”. Here are a some of the questions that we have been asked. Please continue to send in your questions – we are enjoying them. You can email us at askeditorCR@thomasmiller.com

Why should a manager be named as a co-assured on the owner’s insurance policies?

It is a condition in ITIC policies for ship managers to be co-assured on the owners’ hull and P&I policies. This is because ship managers are deemed to be the operator in many jurisdictions around the world. By being named on both the hull and P&I policies, the ship manager is taking advantage of the cover that has always been available to the ship owner in the past when the technical function of managing the ship was still in house. The insurer is not offering any more cover by including the ship manager as a co-assured just because the ship owner has simply sub-contracted some of the functions they used to perform themselves to a third party.

Ship managers need to be co-assured because they are paid a limited fee for the management of the ship compared to the value of the ship and/or the hire or freight earned. The economics of ship management are based on a management fee structure that does not envisage the manager purchasing separate P&I and hull and machinery cover. The costs to the ship manager of obtaining separate insurance to cover his interests up to the full value of the ship (for hull risks) and for all liabilities that might possibly be passed to him (for P&I risks) are prohibitive and unnecessary - especially as this cover is available to the owners for no additional cost as part of their standard marine insurances.

Further, under a BIMCO Shipman 98 and/or 2009 contract, the owner provides an indemnity to the manager. Potentially any subrogated claim from a hull or P&I underwriter that was not caused by the fault of ship manager would be reimbursable by the owner via this indemnity. Therefore it is certainly in the owners best interest to have their managers as co-assureds on their policies.

It is important to remember that the cover provided by ITIC is different to the cover under the hull and P&I policies. ITIC cover is for when the manager has caused a loss to their principal due to negligent performance of the management services, whereas the hull and P&I cover provides protection where the manager has a liability as the owner/operator of the vessel.

Finally, there are different types of co-assurance and many insurers and Clubs have their own names for it – co-assureds, joint assureds, affiliate insureds, misdirected arrow insureds. The manager should be a full co-assured, meaning they are named on the policy and their rights and obligations under the contract are separate from the owners. If any managers are unsure what type of co-assurance they have they should check with their insurance brokers.

Have ITIC ever used shipbroker’s terms and conditions to defend a claim?

The simple answer is yes.

We have found that it is generally accepted that shipbrokers, like most other service providers, do business subject to terms and conditions. Brokers facing claims have benefited from clauses that limit both the scope and amount of their liability.

ITIC’s terms and conditions for shipbrokers can be found at <https://www.itic-insure.com/knowledge/itics-terms-and-conditions-for-ship-brokers-104594/>

ITIC’s recommended post fixture notices setting out the need for principals to use the designated email addresses have been very useful in dealing with situations where important documentation has been misaddressed. See <https://www.itic-insure.com/knowledge/post-fixture-clause-for-shipbrokers-130662/>

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