ITIC SPECIALIST PROFESSIONAL INDEMNITY INSURANCE

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Claims Review

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ITIC IS MANAGED BY **THOMAS MILLER**

ARTICLE 1

Welcome to the 55th edition of ITIC's Claims Review

The ITIC board met in Montreal for its September 2026 board meeting. ITIC continues to be in excellent health, financially strong and maintaining its position as the leader in its field.

ITIC has expanded its additional product offering in response to the evolving needs of ship managers and yacht professionals. ITIC now provides debt collection and MARPOL costs cover for ship managers, and commission collection insurance for yacht brokers and agents.

This edition of the Claims Review provides a selection of marine cases recently handled by ITIC. The cases cover a wide range of issues, including hidden ship defects, documentation errors, regulatory investigations and contractual time bars. It also features an interview with Senior Account Executive Wing Tsang, who discusses his experience of claims handling, as well as guidance on whether a management agreement can be terminated when fees remain unpaid.

ITIC would like to extend its thanks to those who continue to submit questions for the "ask the legal team" feature. Questions for future editions can be sent to askeditorCR@thomasmiller.com.

We hope that these claims examples will be of interest to you and will also help you to identify and act to prevent these types of situations occurring in your businesses.

ARTICLE 2

Workboat woes

A naval architect was engaged to prepare the design and technical specifications for a small workboat intended for use by a municipal authority in sheltered coastal waters.

Several months after delivery, the authority reported a number of operational issues, including excessive vibration, premature wear to propulsion components and concerns regarding the ship's performance under load. It was alleged that the problems stemmed from deficiencies in the original design, and a substantial claim was brought against the naval architect.

With ITIC's support, independent legal and technical experts were appointed to investigate the allegations. While some of the complaints were found to have merit, others were successfully challenged. In addition, several elements of the claim were shown to be time-barred. Following negotiations, the claim was settled for €175,000, compared to an original claim of approximately €520,000.

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When faced with complex technical allegations, engaging the right legal and expert support early can make a significant difference. ITIC can assist members by appointing appropriate specialists to investigate the issues, assess liability and help reduce exposure to claims.

ARTICLE 3

Scrubber slip-up

During the negotiation of a Time Charter (T/C), a shipbroker prepared the ship's Time Charter Description (TCD). Due to an error, the TCD stated the ship's marine diesel oil (MDO) consumption while berthed as 0.3 mt per day, when the actual consumption was approximately 1.8 mt per day. The discrepancy arose because the broker incorrectly assumed the ship was not fitted with scrubbers.

The error remained unnoticed for several years until the charterer entered into a sub-charter arrangement and the discrepancy was identified. The charterer subsequently alleged that the inaccurate TCD had caused it to underestimate its MDO requirements throughout the T/C and presented a claim of approximately US$620,000 for additional fuel costs.

ITIC assisted the shipbroker in responding to the claim and negotiating a settlement. Considering the circumstances of the case and the amount claimed, the matter was ultimately settled for US$125,000, which was reimbursed by ITIC.

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Shipbrokers should take care to verify technical information included in a ship's TCD, particularly consumption figures that may have a significant commercial impact. Small errors in charter documentation can remain undiscovered for years before resulting in substantial claims.

ARTICLE 4

The cost of innocence

After purchasing an ageing bulk carrier, owners appointed technical managers to oversee an overdue special survey and dry docking. Based on information provided by the owners, the managers recommended a shipyard in Vietnam, which the owners approved.

Once repairs began, the ship was found to be in significantly worse condition than expected, with extensive latent defects and substantial additional steel renewals required. To reduce costs, part of the work was deferred and later completed in India, where further deterioration was uncovered.

The owners claimed approximately US$2.3m for delays, repair costs, lost earnings, and other expenses. The managers denied liability, arguing that the losses stemmed from the ship's poor condition at delivery and defects only revealed during class surveys.

The dispute proceeded to arbitration under English law. Following a strong defence case, the claimant sought a drop hands settlement on the second day of the hearing. The matter concluded with no payment to the owner in respect of liability. However, significant legal costs were expended in defending the spurious claim. These were covered in full by ITIC.

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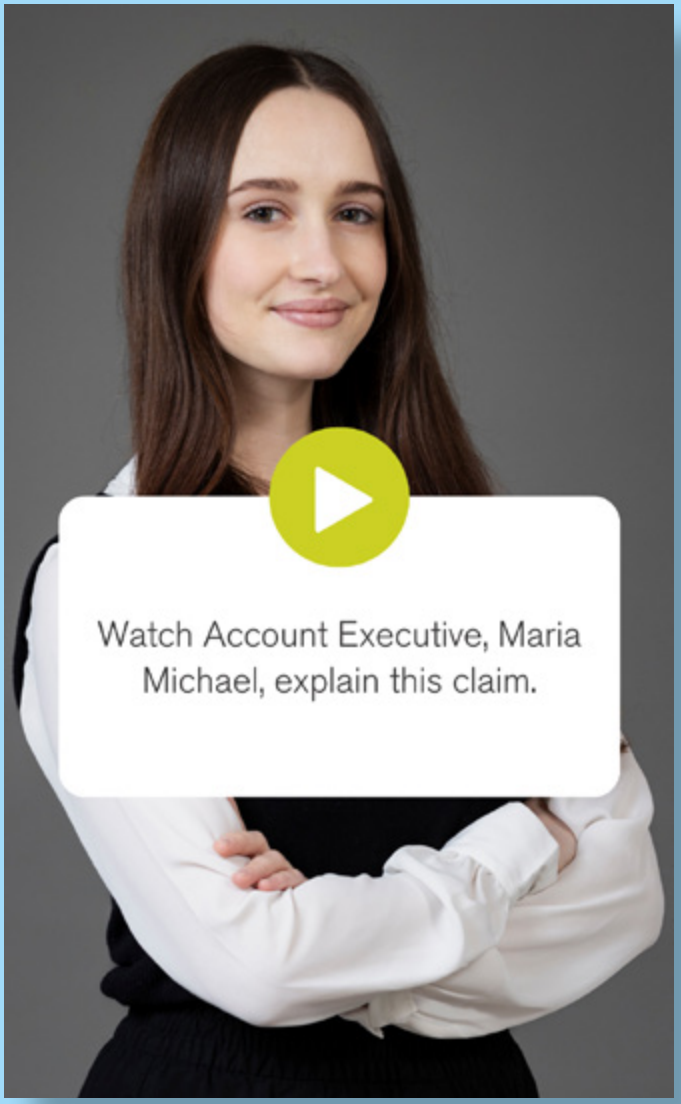
Pre-purchase inspections are essential when acquiring older ships, and robust management agreements can provide valuable protection against claims arising from latent defects and class-driven repairs.

ARTICLE 5

A grape mistake



A ship agent was named in a cargo damage claim after mistakenly signing bills of lading "as carrier" rather than as agent. The claim arose after a shipment of grapes from South Africa to the United Arab Emirates was delayed during transit, resulting in allegations of cargo damage valued at approximately US$2.3m.

Although the delay had nothing to do with the ship agent's actions, the incorrect signature on the bills of lading led cargo interests to include the ship agent in the legal proceedings alongside the carrier. ITIC assisted with the appointment of lawyers, who successfully demonstrated that the ship agent had acted solely as agent and had been incorrectly identified as a carrier due to an administrative error.

The ship agent was ultimately removed from the proceedings and the claim against them was dismissed. ITIC funded the legal costs which were significant.

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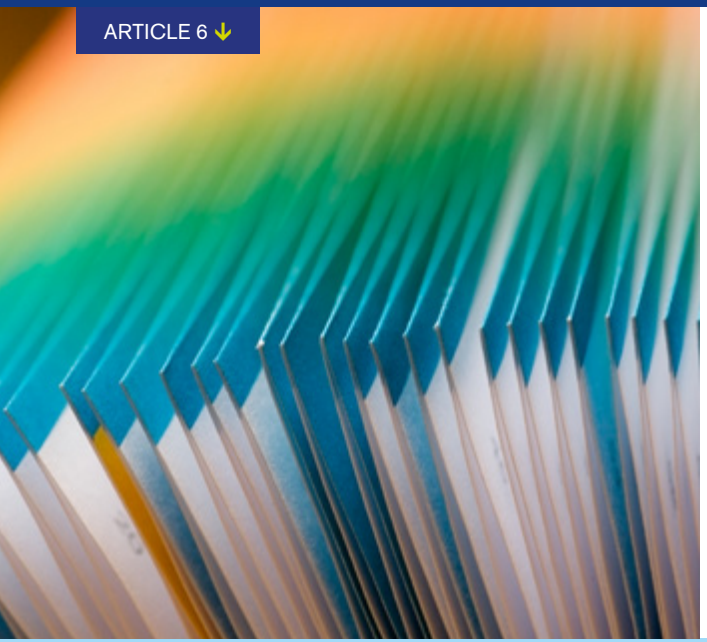
The way transport documents are signed can have significant legal consequences. Agents should ensure staff are properly trained on bill of lading execution, that documents clearly state the capacity in which they are signed, and that suitable terms and conditions are in place. A simple signing error can expose an agent to costly and unnecessary litigation.

ARTICLE 6



Lost in communication

A shipbroker became involved in a dispute after failing to pass on supporting documents relating to a demurrage claim that owners were pursuing against charterers. The claim concerned delays at discharge and was valued at approximately US$48,000.

The owners' claim was not entirely straightforward, and questions remained as to whether all supporting documentation had been provided in time. However, the broker's delay in forwarding key documents prevented the charterers' objections from reaching the owners promptly, reducing the opportunity to address any deficiencies in the claim.

As liability and causation were not clear cut, ITIC assisted the shipbroker in negotiating a commercial settlement. Considering the weaknesses in the underlying demurrage claim, the matter was ultimately resolved with the shipbroker contributing US$24,000 towards the owners' losses.

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Shipbrokers play an important role in the timely exchange of information between contractual parties. Delays in passing on claims or supporting documents can prejudice a party's position and increase the risk of disputes. Careful document handling and prompt communication are essential, particularly where contractual time bars may apply.

ARTICLE 7

Survey scope under scrutiny

A New Zealand marine surveyor carried out a commissioning survey on a passenger ship and confirmed that it met the applicable Maritime NZ standards. The ship subsequently entered service conducting sightseeing and dolphin-watching trips.

Following an onboard incident that resulted in a passenger injury, Maritime NZ launched an investigation and alleged deficiencies in the scope of the survey. It was further alleged that incorrect Maritime NZ standards had been applied and that, had the correct standards been used, the ship would not have been approved to operate.

The surveyor was required to attend a Maritime NZ disciplinary hearing and faced potential penalties, including substantial fines and the loss of approval to act as a surveyor. ITIC appointed specialist lawyers to defend the surveyor's position. Following representations made on the surveyor's behalf, Maritime NZ took no further action and the matter was closed.

Defence costs of approximately NZ$18,000 were incurred and reimbursed by ITIC, subject to the applicable deductible. Although defence costs for disciplinary hearings are technically not covered, the costs of minimising or avoiding liability can be. Therefore, by assisting with the disciplinary hearing and obtaining a good result, a much larger claim from either the injured passenger or ship operator can be avoided - as was the case here.

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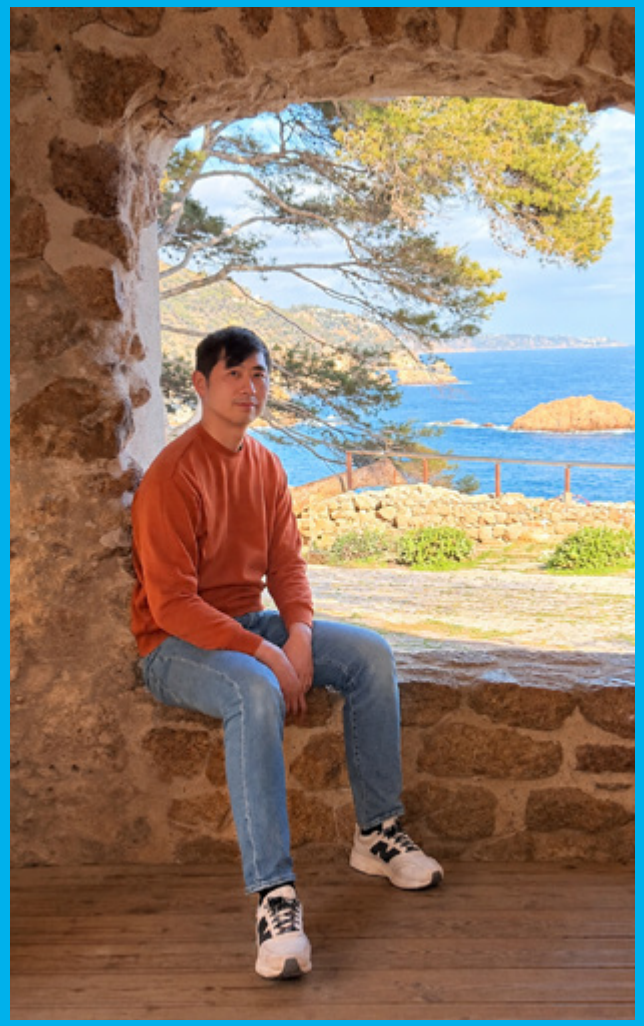
Regulatory investigations can arise even where surveyors believe they have acted appropriately. Maintaining clear records of the survey scope and the reasoning behind key decisions can be invaluable when responding to regulatory scrutiny.

ARTICLE 8



Interview with Wing Tsang

Senior Account Executive

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

I am involved in both claims handling and underwriting, and I think both are equally important. What varies is usually the urgency of the matter. I try to prioritise my work using the matrix of very urgent, very important, less urgent and less important tasks. Having that structure helps me stay organised and ensures that the right things get attention at the right time.

2. What is the biggest challenge when it comes to claims?

Multiple jurisdictions, different legal systems, and finding the best way to support our members through them. Every country has its own laws and procedures, and navigating those differences while achieving a practical outcome for the member can be challenging.

3. What is your favourite part of dealing with a claim?

It has to be ship arrest cases. You need to think several steps ahead and work closely with experienced lawyers, court officials and local representatives to make it happen successfully. At ITIC, we are fortunate to have a great deal of experience in this area. Ship arrest is always a last resort, as we prefer to resolve matters commercially wherever possible, but the excitement and satisfaction of successfully executing a well-planned arrest are very real.

4. What is the most useful thing someone has taught you in your career?

Take things one step at a time. Learn to crawl, then walk, then run. Trying to skip steps usually creates more problems than it solves.

5. If you could swap roles with anyone in the shipping industry for a day, who would it be and why?

I would like to be a container crane operator for a day. I have never done it before, and I have always been fascinated by large machinery. Being responsible for moving containers safely and efficiently while sitting high above a busy terminal sounds like a unique perspective on the industry.

6. If you could name a ship, what would you call it and why?

'MV KIMI', named after my dog. Anyone who knows me knows how easy that decision would be.

7. What are your hobbies?

Spending time with my family and my dog, travelling, and meeting people from different cultures and backgrounds. One of the things I enjoy most, both professionally and personally, is learning about different people and their stories.

8. What is your favourite food?

That is a tricky one. For me, it is often more about how the food is cooked than what the food actually is. If I had to pick one dish, a medium-rare sirloin steak would always be a safe choice. It is hard to go wrong with a good steak.

9. If your workday had a soundtrack, what genre would it be?

A mix of classical music and rock. Most days involve planning, analysis and attention to detail, but every now and then a claim arrives that requires immediate action and raises the tempo considerably.

10. What is your favourite saying?

"Be thankful for everything."

It is a simple reminder to appreciate both the good times and the difficult ones, because there is usually something to learn from every experience.

ARTICLE 9

Too late to dive

A marine surveyor was engaged to inspect the loading and securing of a yacht being transported as cargo aboard a heavy-lift ship on an international voyage. Following the survey, the surveyor issued a certificate confirming that the lashings and fastenings were satisfactory, while also noting a number of ongoing requirements, including regular inspections and tightening of the lashings during the voyage and the avoidance of severe weather where possible.

During the passage, the ship encountered heavy weather and the yacht being carried on deck was lost overboard. Cargo insurers subsequently pursued a claim against the surveyor, alleging that the securing arrangements had been inadequate. The potential exposure exceeded US$5m.

The claim was first presented nearly six years after the incident. ITIC assisted the surveyor in denying liability and defending the claim. Although the cargo insurers were granted an initial extension of time, they failed to commence proceedings before the applicable limitation period expired. They later attempted to pursue the matter in another jurisdiction with a longer limitation period, but proceedings were commenced after that time limit had also passed. The courts ultimately upheld the surveyor's time-bar defence, bringing the matter to an end.

ITIC funded defence costs of approximately US$200,000, helping the surveyor avoid a substantial liability claim.

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Even where a claim appears significant, limitation periods can provide an important defence. Surveyors should retain records, certificates, and correspondence for extended periods, as claims may emerge many years after the original survey.

ARTICLE 10

Timber tango

A ship called at a Southeast Asian port to load a cargo of timber. Local regulations required a quarantine clearance certificate to be issued before loading could begin.

The ship agent mistakenly released the loading authorisation to the terminal before the required inspection had taken place. As a result, the cargo was loaded onboard the ship. Shortly afterwards, the authorities advised that the timber still needed to be inspected. As the inspection could only be carried out ashore, the entire cargo had to be discharged, inspected, and then reloaded before the inspection.

Owners sought to recover the resulting losses from the agent, including cargo handling costs, ship delay, additional charter hire, and related operational expenses.

The costs totalled US$52,350, which were reimbursed in full.

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It is the responsibility of agents to understand and comply with local regulatory requirements. Care should be taken to ensure that all inspections, approvals, and documentation are in place before authorising cargo operations, as even a small oversight can result in significant delays and costs.

ARTICLE 11

Ask the legal team

Can I terminate a management agreement for unpaid fees?

If you're owed several months of management fees, it's natural to question whether you can terminate the agreement. The answer often lies in the contract itself. Most management agreements include provisions that allow termination for material breach, such as prolonged non-payment, provided you follow the correct procedures, including issuing a formal notice and allowing time to remedy the breach. Usually, the management agreement will contain a clause that you are under no obligation to use your own funds to operate the ship. Ideally you should take legal advice before making any decisions.

There are essentially two types of breach - one which allows the innocent party to claim for damages and another which allows them to terminate the contract. Knowing which is which is not always straightforward. One would think not being paid for your services would constitute a fundamental breach, allowing the unpaid party to terminate. But this is not always the case. Careful legal assessment is necessary because if you get this wrong, the innocent party may be the one to face a claim for non-performance. ITIC always recommends legal advice is obtained before making any decision.

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