

Claims Review



Celebrating 50 issues

Welcome to this very special edition of ITIC's Claims Review. This is the 50th edition, with the first ever publication being released back in 1993 – when Bill Clinton was inaugurated as President, Nelson Mandela and FW de Klerk were awarded the Nobel Peace Prize and most importantly, Harry Kane was born. This bespoke front cover includes images from past editions.

Since 1993 a lot has changed, with claims getting more complex, frauds getting more sophisticated and technology playing an ever more prevalent role. However, traditional human error still remains at the core of most of the claims ITIC handles, with some of the mistakes that ITIC was helping members to deal with back in 1993 still happening today.

There is a claim from the first ever edition of the Claims Review in this edition – see if you can spot which one it is. After all these years ITIC is still here supporting its members, whether by paying claims where an error or omission has been made, or in supporting the legal defence where an allegation has wrongfully been made against a member.

In fact, since 1992 ITIC has paid out over US\$ 500 million in claims and recovered over US\$ 240 million in disbursements and commissions.

I would personally like to take this opportunity to thank all past and current contributors to the Claims Review. It really is a team effort. I would also like to thank you, our loyal and enthusiastic readership.

Please don't forget to keep sending in your questions for our "ask the editor" section. You can get in touch with me by e-mailing askeditorCR@thomasmiller.com

We hope that you find this special edition interesting and informative.

Here is to the next 50!

The Editor



A restricted defence

The charterer asked the agent whether there were any restrictions which might cause problems for the ship at the discharge port. The agent telephoned the terminal who advised, verbally, that there were no restrictions and the agent passed that information back to the owner and charterer.

Two weeks later the ship called at the port but due to air draft restrictions the ship could not discharge the full cargo. As the cargo was discharged, the ship lifted in the water such that she was almost touching the port crane. Therefore, the ship had to shift and complete the discharging at another facility.

The charterers subsequently brought a claim against the agent for around US\$ 45,000 for additional costs incurred as a result of having had to discharge part of the cargo elsewhere.

While the agent had provided incorrect information to the operators of the ship, they did so merely by passing on the incorrect information which they had been provided by the terminal. The defence was that as the agent was only passing on information that was provided to them, they had not been negligent. However, it was difficult for the agent to prove this as there was nothing in writing.

The agents negotiated with the charterer who agreed settlement at EUR 34,000. This was covered by ITIC on the basis that the claim would not have been straightforward to defend and thus costs were avoided.

This is a good example of why all telephone conversations should be followed up with an email – or at the least a telephone attendance note, as contemporaneous evidence is always helpful in a dispute.



An Inspector doesn't call

A manager took on the management of a bulk carrier which had been purchased by the owner six months earlier on an "unseen as is basis". It was managed by another third party manager until the ship manager took over. They did not carry out a pre-management survey of the ship at the time she entered into their fleet.

Very shortly thereafter, the ship was detained by Port State Control until certain issues were rectified. These remedial works were undertaken at a cost of US\$ 400,000.

The ship was then allowed to sail on a single voyage basis to a repair yard where a further US\$ 3m was expended to bring the ship back into Class. The owner argued that all the works were due to the managers' mismanagement of the ship.

Experts were appointed who advised that it was evident the ship had deteriorated over a long period of time, well before the ship manager had taken the ship into their management and they concluded the money spent on the repairs could not have been avoided as the works were required by Class, Flag and Port State Control. Therefore, any liability for the costs of the repairs was refuted.

However, due to the detentions and subsequent repairs the ship was off-hire for 78 days. The owner therefore submitted a claim against the manager for US\$ 2m, alleging that the off-hire period could have been minimised had the ship's maintenance been properly managed.

Experts were again appointed. Their advice was that had a full inspection been carried out by the ship manager when the ship first came into their management they would have seen the ship was in poor condition and work could have been properly planned to maximise efficiencies. The experts advised that out of the 78 days off-hire claimed, proper planning by the manager could have reduced this by 35 days. This would have reduced the total claim from US\$ 2m to about US\$ 1m. The maximum liability under the Shipman contract was US\$ 1.2m.

US\$ 0.75m was offered to the owner in settlement which was accepted. This claim shows how vital it is to carry out a detailed survey of a ship when it comes into members' management.

A prudent ship manager should ensure that a comprehensive inspection of the ship is carried out when (or as close as possible to when) they commence management services. ITIC has seen numerous claims where the manager has had difficulty proving the condition of the vessel was already bad when the management commenced. Without a contemporaneous survey the manager can find such allegations difficult to refute. Further, if the ship is in an extremely bad condition, a manager may wish to take the opportunity to decline the appointment.

Confection convection

An agent set a reefer at -18 instead of +18 degrees for a cargo of candy going from India to Angola. The cargo, which was worth US\$ 20,000, was a total loss. The claim also included additional sums for disposal of the cargo and legal costs of US\$ 10,000.

Upon review it was clear that the agent had made a mistake in entering the "-" on the carrier's system. Therefore they had a liability to which there was no defence. The carrier settled the claim with the shipper for US\$ 30,000 and they in turn claimed this sum back from the agent.

ITIC covered the full claim less the ship agent's deductible.





A claim quickly despatched

A shipbroker regularly acted for the same charterers in a particular trade where it was customary to agree to “half despatch”. This is essentially a charge that the charterer gets from the owner if they conclude operations with the ship faster than the allotted time they have been given. It is in effect the opposite of paying demurrage. The rate is usually half of the demurrage rate – hence “half despatch”.

However, in this particular fixture the owners requested free despatch i.e. they would pay nothing.

The recap was issued which contained reference to “half despatch” and the owners advised the broker that this was incorrect and that they had agreed basis free despatch.

The individual broker was covering for another broker. The second broker agreed that this was the case, but he had failed to inform the charterers, or to amend the recap accordingly. Therefore, the position was that charterers believed they had agreed “half despatch” and owners believed they had agreed “free despatch”.

Unsurprisingly, at the end of the voyage charterers felt that they had despatch due to them, but owners refused to pay. The charterers looked to the broker to reimburse the funds they felt they were owed.

As the difference was relatively low, and it was clear an error had been made (albeit it arguable it was not causative of any loss) it was felt prudent to settle for US\$ 45,000 in lieu of legal costs and litigation risk. This was reimbursed by ITIC.

A cracking good claim

A naval architect was engaged by a customer to design a 24m catamaran to service the offshore oil and gas industry. During sea trials following construction of the vessel and after delivery to the client, significant vibration was apparent in the vessel’s rudders. This caused stress to the hull and eventually the structure began cracking.

The naval architect worked with the owner and shipyard to attempt to find a solution to the problem and various alterations were made to the vessel. However, these changes resulted in no significant reduction in vibration.

Short term limitations were therefore placed on the vessel’s operations and further investigations indicated that the vibration in the rudders was being caused by cavitation from the original propellers. Cavitation is where the formation of bubbles from a nearby moving blade – i.e. the propeller causes pitting on the surface of the rudder and/or blades.

The naval architect proposed that the propellers be replaced as this could alleviate the vibration. This was done, at the expense of the designer (which was covered by ITIC). However, whilst this did cause a small reduction in vibration levels the vessel was still unable to meet the speed and performance specifications as set out in the design agreement.

Experts were engaged to advise as to whether the vibration and performance issues could be attributed to errors on the part of the naval architect. They concluded that the lack of

clearance between the tip of the propellers and the vessel, as designed by the naval architect, was likely to be the principal cause of the vibrations.

The expert recommended that replacement rudders be installed as well as a smaller diameter propeller. However, the rudder support structure, which had not been constructed in accordance with the naval architect’s designs, also needed to be rectified – and the replacement rudders could only be done after this work was completed.

At this point and before any further rectification work was carried out, the owners instructed lawyers to pursue a claim against both the naval architect and the shipyard for a range of losses including rectification and repair costs, loss of earnings, loss in value of the vessel and other related costs.

The claim proceeded slowly over a number of years as the claimants struggled to obtain expert evidence to support their claim. However they ultimately presented a claim for US\$ 5m plus legal costs and interest.

Attempts were made to settle the claim at mediation but these failed. However, the naval architect did not have funds themselves to settle the claim and the limit of cover under the policy was relatively low compared to the claim. The claimants were ultimately persuaded to settle for US\$ 400,000, less than 10% of the actual claim. ITIC indemnified the naval architect this sum.

One of Mikaela's paintings



Interview with Mikaela Koni

Mikaela Koni, ITIC Europe's senior claims executive, sits down to chat with the Claims Review editor, as part of this regular interview series in which we get to know ITIC, and ITIC Europe's, claims handlers. Mikaela was ITIC Europe's first full time employee and is based in the Limassol office. In this interview she outlines her favourite part of dealing with claims and we learn why she enjoys painting in her spare time.

What is your role?

I am a Senior Claims Executive, currently handling the European Claims for ITIC Europe.

Where were you working before? Please give us a brief overview of your career history.

Previously, I held the position of internal legal advisor for a Chartering Shipping Firm specialising in the transport of dry bulk and bagged goods between the Asian and African continent. My duties included the handling of a wide range of FD&D claims, bunker disputes as well as the drafting of charter parties. Before that, I was an associate in two private practice law firms with focus on corporate and commercial matters, alternative dispute resolution and court litigation.

What are you most looking forward to in your new role?

I am really excited to be part of the new team that is set up to cover the European members' needs and I am looking forward to handling even more new and exciting claims! As someone said, "there is never a dull day in ITIC" and indeed that could not be more true as each claim that comes in is always unique, challenging and always exciting.

What is the biggest challenge when it comes to claims?

Although I have a maritime and legal background and therefore have a good grasp of the different actors that operate in the shipping world, the most challenging aspect at the moment is understanding the story behind a claim because often the important elements lie within the details which are not always available or easy to extract.

What is the most memorable claim you have handled?

The most memorable claim I have handled up to now, is a debt collection claim. Although debt collections do not tend to be as intriguing and interesting as indemnity claims tend to be, this claim was and still is quite interesting. It is a claim whereby our members, which were agents, did not get paid for their services on various calls and vessels by the charterers that appointed them. There were multiple issues in chasing this specific debt, nevertheless, we have secured multiple court decisions against the Debtors and have recovered a large amount of the debt by arresting one of the vessels basis a maritime lien.

What is your favourite part of dealing with claims?

I really enjoy the legal part of the claims such as legal research and contract reviewing.

What is your least favourite aspect of claims handling?

I really dislike handling claims where we have exhausted the remedies available to the member and we are unable to further assist them. It is a rare scenario but it feels like you let the bad guy go.

What is your favourite saying?

"A ship in harbour is safe, but that is not what ships are built for." John A Shedd 1928

What are your hobbies and favourite pastimes?

I enjoy canoeing, SUP, going hiking with my dog and reading but truly my favourite pastime is painting. I try to devote at least two hours per week in painting as it helps relax my mind.

What is your favourite food?

With the danger of sounding very mainstream, my favourite food is spaghetti Bolognese with a nice 50% pork 50% beef mince.

What is your favourite film?

If we are talking about grown up movies, The Age of Adaline, I am always up to re-watching it. Now, if we are talking about cartoons, any Despicable Me / Minions / Angry Birds movie, they always offer a good laugh.

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

The Invisible Life of Addie LaRue by V. E. Schwab. It is about a woman who makes a deal with the devil to be always young and free but the catch is, that no matter how many people she meets, nobody remembers her afterwards. Although it is fiction, it does force you to think and put things into perspective.

Any pet hates?

I have quite a few but the main ones are, people chewing with their mouth open, people popping balloons and people watching reels or videos with their sound on in public.

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

I would probably have been a florist or a painter! I love bright vibrant colours and I enjoy creating things that are a source of happiness for other people.



Wine temperature - how Merlot can you go?

Importers of wines from France into the United States had previously encountered problems with consignments imported through New York during the winter months when the wine could be subjected to sub-zero temperatures causing it to freeze and so lose its quality.

In response to this problem, instructions were issued which required the agent to instruct the terminal operator to open the container as soon as it was delivered and place portable heaters inside to keep the temperature in the container above freezing.

Unfortunately, the agent failed to give the necessary instructions in respect of a cargo of nine containers of wine, and whilst eight of the containers suffered no damage, the carriers received a claim for US\$ 120,000 for freezing damage to the remaining container.

A claim was made against the agent and after lengthy negotiations a satisfactory settlement in the sum of US\$ 32,650 was agreed.



You're barred

Following the conclusion of two voyages, the owners sent two claims (heating and demurrage) to the brokers within the contractual time bar, with instructions for the broker to send them to charterers. However, the emails were overlooked by the broker and were not sent.

When owners asked for an update on both claims some eight months later, it became apparent to the broker that they had missed the emails and not forwarded the claims to charterers. The broker immediately forwarded the claims, but the charterers rejected them both as they were now time barred under the terms of the charter party.

Brokers worked hard to mitigate the claims with the owners and the charterers, but to no avail. They then informed ITIC. There were no defences available to the broker which meant the owner would have had a valid claim against them. Therefore, the broker settled the claims for a total of US\$ 204,000. This was reimbursed by ITIC.

This is a very common mistake. It is helpful to install a diary system and/or to make sure absent colleague's desks are covered so emails are not missed when they are away. Some companies have a general "claims" inbox which is viewed by numerous people so emails are not missed.



Ask the Editor

Please continue to send in your questions – we are enjoying them. You can email us at askeditorCR@thomasmiller.com

What is the difference between a Mate's Receipt (MR) and a Bill of Lading (BL)?

This is often asked by some of our ship agent members. Essentially, these are two different documents with two different functions. The MR is the ship's receipt of the goods. The document usually contains the type of cargo, the shipper's name, the date of receipt/loading on board, the port of loading and discharge and most importantly, a description of the goods, noting any marks or damage to the cargo or packing. If no remarks are made, this is often referred to as a "clean" receipt. If remarks or comments are made, it is referred to as a "claused" receipt. Most shippers want a clean receipt. The MR is usually signed by the Master or Chief Officer.

The Bill of Lading has multiple functions. It is itself a receipt of the goods (once it has been swapped for the MR), is usually the evidence of the contract of carriage between the shipper and the carrier and finally, it is a document of title (ie it indicates an ownership or ownership interest in the goods – which is necessary if they are to be sold during the carriage). The information on the BL is usually taken from the MR. The two documents should match. If they do not, problems can arise for the carrier and in turn, for the agent.

You can watch ITIC's bills of lading e-learning seminar, for more information, here: <https://www.itic-insure.com/knowledge/e-learning/bills-of-lading/>

What is a breach of warranty of authority?

ITIC provides cover for this exact issue – but what is it?

When an agent (often a broker) goes out into the world they will often be representing a principal. In other words, they warrant to third parties that they have the authority of the principal they claim to represent. If it turns out that they do not actually have the authority of the principal this is a breach of that warranty for which the broker will be liable if a third party has suffered a loss from relying on that authority.

There are some different types of breach of warranty of authority but ultimately, it does not matter if the broker is innocent (ie the principal lied to them or a broker higher up in a chain represented they had authority when they did not) or if they did it on purpose. The broker will inevitably have a liability to the innocent third party who relied on the warranty of authority.

50th

Celebrating 50 issues of The Claims Review

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For further information on any of the products, services or cover provided by ITIC contact Charlotte Kirk at: International Transport Intermediaries Club Ltd, 90 Fenchurch Street, London EC3M 4ST.

tel + 44 (0)20 7338 0150 email ITIC@thomasmiller.com web itic-insure.com

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itic-insure.com



+44 (0)20
7204 2928



@ITICLondon



@ITIC insurance