



THE
PROFESSIONAL
INSURER

Welcome to the Autumn edition of the ITIC Claims Review, which is published to coincide with the September 2010 meeting of the Club's Board of Directors in Istanbul, Turkey.

claims review

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The dangers of assumption

A large construction firm was undertaking building works on an island. In order to construct part of the project, a large crane was needed to be shipped by barge from the mainland.

The construction company asked ITIC's member, a marine consultant, for advice in relation to the carriage of the crane. This included the stowage and lashing arrangements. The advice provided included the separation of the crane boom from the main crane structure to avoid heavy stresses during carriage.

The construction company replied that they did not want to remove the boom due to the extra expense, but were happy with the other advice provided. As the marine consultant was not asked for an alternative method of lashing the boom, it was assumed that an alternative method had been found by the construction company.

During the voyage to the island, the vessel encountered heavy weather and the boom broke free from the main crane structure. There was a large amount of damage to the crane, and to a vehicle which was stowed on the deck at the time.

As the construction company had hired the crane they had to pay the rental company for the damage in the first instance. They then made a claim against the marine consultant for USD 850,000 for failure in their duty of care to provide proper securing advice.

The member had made the assumption that no further advice was required but, due to their involvement in the project, was aware that the shipment was going to go ahead. Although they had recommended the separation of the boom from the crane, they had not made clear the likely consequences of not doing so. While the greater part of the blame would lie with others involved in the shipment the claim was settled by ITIC on behalf of the marine consultant for USD 220,000.





Check it has been received

A shipbroker, who was a member of ITIC, was acting for a ship owner. The owners had a demurrage claim against the charterers and the charterparty contained the following time bars:

60 day notification – mid January 2008

90 day documented claim – mid February 2008

The owners passed the full documented claim to the shipbroker in December 2007 who sent it to the charterer via e-mail on the same day. This was in accordance with the charterers instructions to all brokers, which stated that all demurrage claims/ post fixture claims/ notifications/ deviations/ detentions should be sent to that e-mail address.

The shipbroker did not receive any failure notice or rejection and on this basis believed that it had been sent successfully. However, the charterer's instructions stated that the sender would receive an automated confirmation of receipt within 48 hours and this was not received by the shipbroker.

As the broker had not heard from the charterer, they chased them and re-sent the claim to the same e-mail address in early February 2008 – which was after the 60 day notification period but before the 90 day period expired. Again, no notice of any systems failure or rejection was generated and again, no automated response was received from the charterer.

The owners continued to chase for payment, but the charterer argued that they had never received the claim and therefore it was time barred. The charterer was not prepared to negotiate further.

ITIC obtained Counsel's opinion that the charterer was likely to be successful. When the shipbroker did not receive the automated response from the charterer this should have alerted them to the fact it was not received. However, as the broker had sent the e-mail in time it did not seem fair that the charterer should be able to avoid liability completely.

The owners commenced arbitration against the charterer, but stated that they would issue litigation against the broker if the arbitration was unsuccessful. ITIC then contacted the charterer and suggested that it seemed sensible to settle the claim before unnecessary costs were incurred. Eventually, the charterer agreed to contribute towards the costs of the claim and the owners agreed to forgo their entitlement to the legal costs which they had already incurred.

The claim on the shipbroker was paid by ITIC.

ITIC has issued several circulars and guidelines on demurrage time bars. It is important that every tanker broker reviews their systems to ensure no mistakes can occur.

A SPECIAL INVESTIGATION

Fraud through the web

A shipbroker sought ITIC's assistance because fraudsters were using their address and VAT number. They advised that they had received a call from a man whose girlfriend wanted to buy a vintage sports car. The person selling it was in Italy. The purchaser had found a company in the UK that offered to act as a stakeholder for cross border car sales. The company offered to hold the client's money then release the purchase price when the car was shipped.

The man was concerned because when he went on the website he noticed that the phone numbers given were mobile telephones. He checked the address given and found it was the shipbroker's office address. He contacted the shipbroker who realised the website was also using their VAT number.

The shipbroker contacted ITIC, who requested Thomas Miller's team of specialist investigators, Signum Services, to advise on the best way to deal with the situation. Signum provided the details of the specialist VAT fraud office. The company reported the case to the Fraud Office and the website was promptly closed down.



Missing containers

A ship agent had been instructed to arrange for five containers to be shipped from the UK.

In error, the agency office left a clause on the bill of lading stating "Shipper's Own Containers". As a result the containers were released to the consignee and

no steps were taken to see if they were returned. However, the containers in fact belonged to a leasing company.

The units were only discovered as missing at an annual inventory check by the line. They subsequently held the agent liable for the depreciated cost of

the five units and eight month leasing costs. An attempt was made to retrieve the containers from the receiver but given the time delay they confirmed that the containers had been sold on.

The ship agent received a claim for GBP 45,000, which was paid by ITIC.

Thaw end of the deal

A liner agent accepted a booking of two reefer containers of frozen fish for shipment to China. Instructions were received to ship the cargo at a temperature of minus 20. Unfortunately, when the details of the shipment were being entered into the carrier's computer system, the temperature setting was mistakenly left blank.

As a result of the failure to enter a temperature, the containers were carried as "inactive reefers". They were accordingly not plugged in while on board the vessel.

When the frozen fish arrived at the destination it had deteriorated to the extent that it was not fit for consumption and could not be processed for any other purposes. This was confirmed by surveyors who arranged for the cargo to be destroyed in accordance with local regulations.

The claim was initially settled by the shipping line in accordance with the terms of the bill of lading. The claim was subsequently passed to the ship agent, whose staff had made the clerical error and paid by ITIC.

Reefer cargoes carried at incorrect temperatures are one of the most frequent claims brought to ITIC. It is important for ship agents to take care to follow the correct instructions.

Take care who you are writing to

A number of claims against shipbrokers are caused by a failure to take care who a message is addressed to. One example is the broker using the "reply" button, instead of "forward" in email communication. The result being that an offer with a time limit was not passed on to the charterers, but sent back to the owners. When the time limit expired the owners fixed the ship to another charterer. Sale and purchase business is not immune from this type of error.

In a recent case, a ship had been sold but not yet delivered to the buyers. The seller's broker received a speed and performance claim from the charterers. The ship had been fixed with the same charterers in direct continuation once the buyers took possession of the vessel. The sellers' brokers mistakenly forwarded the claim to the buyers and not their clients, the sellers. The buyers immediately became concerned whether the performance of the vessel would match the figures they had been given. The buyers' lawyers sent a strongly worded message reserving their rights against the sellers for misrepresentation. The sellers, of course, vehemently complained to their brokers.



Delivery of container to wrong party

In November 2000, a liner agent accepted a booking of equipment for transportation from Europe to America. The cargo was in a single 40ft container. The booking was made by a freight forwarder. The bill of lading showed that the freight forwarder's European agent was the shipper and the freight forwarder was the consignee.

The freight forwarder issued their own "house" bill of lading to the shipper through to the inland destination. The only party that the liner agent could legally deliver the cargo to was the freight forwarder.

After the container was discharged from the ship it was transported by rail to its final destination. In spite of an instruction from the freight forwarder to the liner agent not to release the cargo it was in fact released to the end users. These end users were in financial difficulties and subsequently filed for bankruptcy without paying for the cargo.

The cargo owner claimed against the freight forwarder in Europe. The freight forwarder in turn filed a claim against the liner agent in the New York courts. ITIC appointed lawyers to represent the liner agent. The lawyer advised that the US COGSA package limitation of USD 500 applied. That would mean for the equipment had a total liability of USD 13,500 against a claim of USD 685,000.

An offer of the package limitation amount was made to the shipper, who rejected it. No further actions were taken between 2002 and 2006. Subsequently, the US proceedings were reactivated. The liner agent's lawyers filed a motion for summary judgement limiting their liability to the package limitation amount. This was successful. The shipper however appealed.

The appeal court confirmed the ruling in favour of the liner agents. With the addition of interest the claim was ultimately settled for USD 15,000. Unfortunately, the costs of the appeal were extensive, amounting to more than USD 200,000, which were paid by ITIC.

Failure to obtain a receipt for equipment delivery

A ship agency office in the Far East reported a case regarding their local office's failure to obtain evidence of delivering a consignment of goods to a vessel.

The case involved a delivery of six portable gas detectors which were contained within a black plastic case that had been couriered to the agent's office for delivery to the vessel. On checking the courier's system, it was clear that the gas detectors had indeed been received by the agent (i.e. signed for). Internal investigation suggested that the agent had proceeded to deliver the units to the ship; however, owner's alleged that they had not received them.

The owner advised that unless the ship agent could provide documentary evidence to show that the cases had indeed been delivered to the vessel, they would claim the replacement value from the ship agent. The agent confirmed that under their own operating procedure, they should have obtained the necessary acknowledgement from the vessel that the delivery had been made, however, due to an error the local agent failed to get a receipt or proof of delivery.

The replacement value was USD 170,487 which was reimbursed by ITIC.

ITIC's Robert Sniffen will be speaking at the **ASBA conference** in Miami on 30th September 2010.

Andrew Jamieson, ITIC's Claims Director, will be at the **FONASBA AGM** in Varna, Bulgaria, 12th - 15th October

The next ITIC publication will be for **Shipmanagers** and will feature an interview with ITIC's Managing Director, Stuart Munro, who was involved in the drafting of BIMCO Shipman 2009. Stuart will highlight the amendments to the new shipmanagement agreement and their implications on your liability and your insurance with ITIC.

Thank you to all ITIC's members who replied to our publications survey. We were pleased that so many of you enjoy our publications just the way they are. Should you have any comments or feedback, please do not hesitate to let us know.