

# Ship agency

## Claims Review

The claims examples reproduced here have all featured in issues of The Claims Review and are all case studies which have either been paid by ITIC or where assistance has been provided. These examples should be invaluable in helping you to identify potential claims exposure within your business. ITIC recommends that you review your procedures continuously in order that you avoid these types of situations occurring to you and your business.

### Misread tariff

A port agent was asked by the owners of a ship to provide a quote for the costs of discharging a shipment of project cargo.

The agent reviewed the port authority's official tariffs, and advised the owners that the stevedoring costs would be US\$28.90 per metric tonne of cargo.

The cargo weighed 296 metric tonnes, so the owners calculated the stevedoring costs at approximately US\$8,500 and quoted that in turn to the charterers of the ship. The voyage was fixed on that basis.

The cargo was discharged and the stevedores invoiced the agent US\$130,000 - costs which were passed to the owners who questioned them. The agent then realised that the US\$28.90 rate that they had quoted to the owners was the rate per cubic metre, not per metric tonne. The case was reported to ITIC who verified, via local correspondents, that the agent had simply misread the port tariff document.

The agent approached the stevedores who were willing to offer a discount on the costs, and ultimately the agent settled the claim for US\$75,000, which was covered by ITIC.

**Claims commonly arise from misread tariffs. In another recent case, ship agents in Australia quoted the incorrect port charges for a local port to their customer. Their customer then fixed on that basis and suffered a loss of AU\$86,000. The claim against the agent was reimbursed by ITIC.**

## The price of proving innocence

A ship agent was named as a second defendant by cargo interests in a claim for damage to significant quantities of imported aluminium. The ship agent had not been involved with the damage to the cargo, but had merely been included in the legal proceedings.

ITIC, on behalf of the ship agent requested that the shipowner instruct their lawyers to include the defence of the ship agent's interests, along with those of the owner's. The owner's P&I Club agreed to defend the ship agent and a judgement in favour of the defendants was passed.

However this judgement was appealed and then overturned. In the meantime the ship owner went into administration and the P&I

Club was no longer in a position to support the claim. ITIC instructed the lawyer to continue defending the ship agent. The case was then heard by an appeal court who found in favour of the claimants. This decision was appealed in the Supreme Court, who passed judgement confirming that the case filed against the agent lacked substance. The total costs incurred amounted to US\$95,000.

**This claim shows the high price of proving innocence. As with a number of claims seen by ITIC, this example illustrates that you don't need to make a mistake to be sued and you could find yourself on the receiving end of legal proceedings, even if you are not at fault.**

## Not our bills

Ship agents based in South America found themselves being pursued by owners of a ship that they had never represented. The claim was for legal costs that the ship's owners incurred for filing a response to legal proceedings issued by cargo insurers.

Due to a simple error in the ship agents' office, a bill of lading was issued in the name of "Good Ship" instead of "Good Ship 1". The documentary error went unnoticed. The "Good Ship 1" arrived in Miami, USA where the cargo was found to be damaged. Legal proceedings were subsequently issued by cargo insurers against the owners of the ship named in the bill of lading. The owners of "Good Ship" had to instruct lawyers to file a response to the demand to avoid judgment being entered against them.

The defence they filed denied liability on the basis that the "Good Ship" was not the correct ship. The claimants eventually accepted that this was the case and pursued their claim against the actual carriers. Fees and legal expenses incurred by the owners of "Good Ship" were claimed from the agent. It is interesting to speculate what would have happened if the claim against the actual carriers had become time barred before the error was resolved.



## Boom and bust

A ship agent booked a container of calcium hypochlorite to be moved from a port in the Middle East to Europe. Calcium hypochlorite is a dangerous cargo, with an IMO classification of 5.1. The shipping line had sent clear instructions to the agent prohibiting the loading of this cargo, along with a number of other dangerous cargoes. The agent appeared to have overlooked this instruction.

Both the cargo and the container were clearly marked as dangerous cargo, so were shipped on deck as per regulations.

Unfortunately the cargo auto-combusted onboard the vessel and caused damage to four other neighbouring containers, their cargoes and the ship. The total claim was in excess of US\$700,000.

Cargo claims were pursued against the shipping line, who ultimately settled each of the claims out of court. The total cost was US\$130,000, including legal costs.

**The shipping line held the agent responsible and ITIC reimbursed the agent in full, less the deductible.**



## The forgotten tug costs

A Scandinavian port agent was asked by the owners of a ship to provide a proforma disbursement account for a call at their port. When the final disbursement account was sent to the owners, they questioned the fact that it included a charge of US\$17,500 for tugs that had not been part of the proforma disbursement account.

The original proforma disbursement account was used by the owners when calculating

the rate required for the fixture, which meant that the owners had not allowed for the tug charges. The owners claimed the tug charges from the port agent.

Although the owners were regular callers at the port and ought to have realised that tugs were required, they claimed to have only read the bottom line when negotiating the fixture and the agent's omission had therefore caused them a loss.



## Wrong holds

A ship agent issued bills of lading in respect of a cargo of different types of coal being transported to Canada. Due to human error, they confused the holds and indicated on the bills of lading that Coal Type A cargo was in holds 1, 3 and 5 and Coal Type B cargo was in holds 2 and 4. However, it was actually the other way around.

The cargoes were discharged to the wrong facilities. The receivers brought a claim against the owner which was passed to the agent.

ITIC arranged for lawyers to represent the agent. They argued that there was a discharge plan on the vessel (which was correct) and had the vessel been discharged in accordance with the discharge plan this claim would not have happened. In addition the receivers had a surveyor in attendance and his reports referred to the correct configuration of the cargo. The bills of lading were however clearly wrong and the agent ultimately contributed US\$185,000 which was 45% of the claimed amount.

**ITIC reimbursed the costs of the settlement and the legal fees incurred.**

## Arctic arrest

A South American ship agent advised ITIC that the owners of a cruise ship owed them over US\$25,000 relating to the costs of crew and supplies incurred during various calls. Reminders and chasers to the owners had not resulted in payment and it was decided that more aggressive action was needed.

ITIC ascertained that the ship was chartered to a cruise line and was due to sail from a port in the Canadian Arctic for the High Arctic, and had no apparent plans to revisit South American waters. ITIC instructed its Canadian lawyers to arrest the ship where she was in the Canadian Arctic and within hours of the arrest being served the owners paid all the outstanding debts in full.

The owners admitted that they did not think that anyone would be able to arrest the ship in such a desolate place. The owners were wrong and they paid not only the outstanding disbursements, but also the arrest costs.

## Telex release goes wrong

Liner agents frequently have to arrange for cargo to be released against bills of lading surrendered at the loadport – the so called “Telex Release”. This type of release is risky as no bill of lading is collected at the discharge port and frequently results in misdelivery of cargo. In a recent case two containers were shipped to a port in the Netherlands by a shipper; both containers were consigned to the same company.

The shipper gave instructions to the load port agent to release one of the containers and this authority was passed to the discharge port agent, who mistakenly released both containers. The consignee never paid for the second container, and the shipper appointed lawyers to pursue recovery of €76,000, the value of the cargo in the second container, from the shipping line.

The claim was eventually settled, after negotiation, for €66,000, which was claimed from the discharge port agent.



## All in the timing

A ship agent was advised by the local pilots' association that ships arriving or departing the port needed to give two hours' notice for pilot services instead of one.

Unfortunately, shortly after the change came into effect, the agent overlooked the

new requirement. As a result there was no pilot available for a ship arriving at the port under their agency. The ship missed its berth and was delayed by 2 days.

**The agent received a claim of just under US\$50,000, which was reimbursed by ITIC.**

## Berth booking blunder

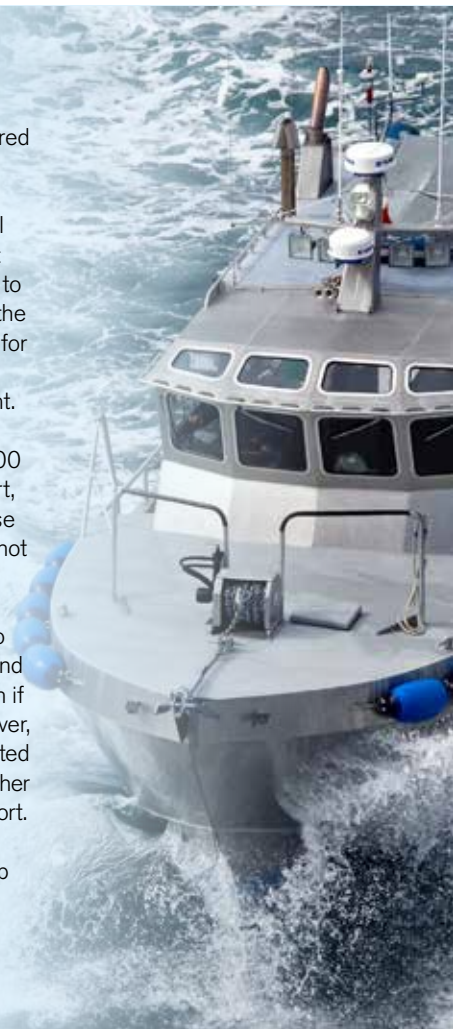
Ship owners appointed a port agent for the call of their vessel for bunkers. The agent failed to complete the required customs formalities in time to book the berth.

Unfortunately, this mistake went unnoticed until the vessel was approaching the port. After being notified by the agent of the mistake, the ship owner decided to divert the vessel to another port around 500 km north of the original port as the bunker berth at the first port was not due to become free for another five days. The ship agent also operated within the second port and the bunkering proceeded without incident.

When the time came to settle invoices totalling US\$26,000 issued by the various service providers in the second port, the owners refused to pay. The owners claimed that these additional costs had been incurred by them as a result of not being able to call at the original port.

The costs were in fact the normal charges that related to bunker calls, such as tugs, security charges and pilotage and would have been payable by the owners in any event, even if the vessel had been able to call at the original port. However, the vessel had been delayed by two days and it was estimated had incurred costs that exceeded this amount for fuel and other costs, as a result of having to travel 500 km to the second port.

Rather than enter into a dispute with the owners, the ship agent paid the port costs for the bunker call, and was reimbursed by ITIC.



## Reefer claims

ITIC has, over the years, paid out large sums in respect of claims for damage to refrigerated cargo due to mistakes by ship agents in passing information on temperatures. Claims from the incorrect setting of reefer containers are one of the most frequent claims experienced at ITIC. Ship agents need to ensure that they have the processes in place to ensure that they correctly manage reefer containers.

### Failing to go cold turkey

A ship agent, arranging for the export of a consignment of frozen turkeys, mistakenly notified the line's reefer engineers that the cargo needed to be carried at a temperature of +13C°. instead of -25C°. The mistake went unnoticed and the cargo was loaded onto the ship accordingly.

The discrepancy between the bill of lading and the actual temperature of the container was also not noticed during an inspection of the containers by the crew of the vessel, prior

to sailing. It was also later alleged that the container temperature went unchecked for the entire voyage. When it was discovered that the turkeys had been carried at the incorrect temperature, the carrier received a claim for the total loss of the cargo (US\$125,045).

In turn, they claimed this amount from the ship agent. In view of the contributory negligence by the ship's crew, the claim was eventually settled with a contribution from the ship agent of US\$30,000.

### Not plugged in

Three containers of pork were shipped from one European port to another. The containers were discharged from the ship, but the discharge port agent had overlooked the instructions to keep the container on power and the units were not plugged in until 11 days later.

The reefer logs showed that the cargo had been at the correct temperature whilst on the ship, but that it was only after discharge that the temperatures started to rise.

**The port agent faced a claim of US\$45,000, which they had to pay. ITIC reimbursed the ship agent in full.**

### A tidal change

In early 2011 a ship agent at a tidal port in Japan was asked to provide a tide table to enable the owner of a ship to calculate the permissible drafts for the dates his ship was due to berth at the port. The ship agent duly scanned the tide table and sent it electronically to the owner.

The ship arrived at the port with a draft of 8.56m, but was informed by the port authorities that the permissible draft was only 7.8m. Unfortunately it emerged that the agent had inadvertently sent the owner the tide table for 2012 instead of 2011. The two tide tables were kept together in the same file, and during scanning the corner of the tide table had folded over, thereby obscuring the year.

The excess draft meant that the ship could only discharge for about 4 hours in the morning and 2 hours in the afternoon. The ship had to shift anchorage three times during the four days it took her to discharge, which was twice as long as it should have taken had the shifting not had to occur.

The owner claimed the pilotage and towage costs involved in shifting to the anchorage three times, plus two days hire, additional bunker consumption, additional stevedoring, which totalled US\$143,000. It was agreed by the owner that some of the costs would have been incurred in any event, and the claim for additional costs was settled at US\$120,000.

## Gas free or not gas free

A North American ship agent was nominated for the call of a ship scheduled to load at a terminal on the east coast of USA. After the ship agent notified the terminal of the ship's pending arrival, the terminal foreman advised the agent that the ship had to be "gas free" prior to loading.

This information was passed to the master of the ship. The master replied that his tanks were inerted to less than 2%. The ship agent did not pass this information on to the terminal. The ship received loading instructions and proceeded to clean tanks while en route to the terminal. Just prior to arrival, the terminal sent a message again to the agent to the effect that the tanks would need to be gas free prior to loading.

The ship agent passed this information to the master who said that he would require 24 hours to make the ship gas free. This procedure was followed but the shipowner found subsequently that the terminal would have considered the ship ready to load in either a gas free state or an inerted state. A demurrage claim of US\$67,375 was incurred and this was claimed from the agent.

There were arguments on behalf of the agent as to why the charterers and the owners had not taken more care to ensure that the ship complied with the terminal's requirements, but the agent had to accept responsibility for an element of the demurrage claim.

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