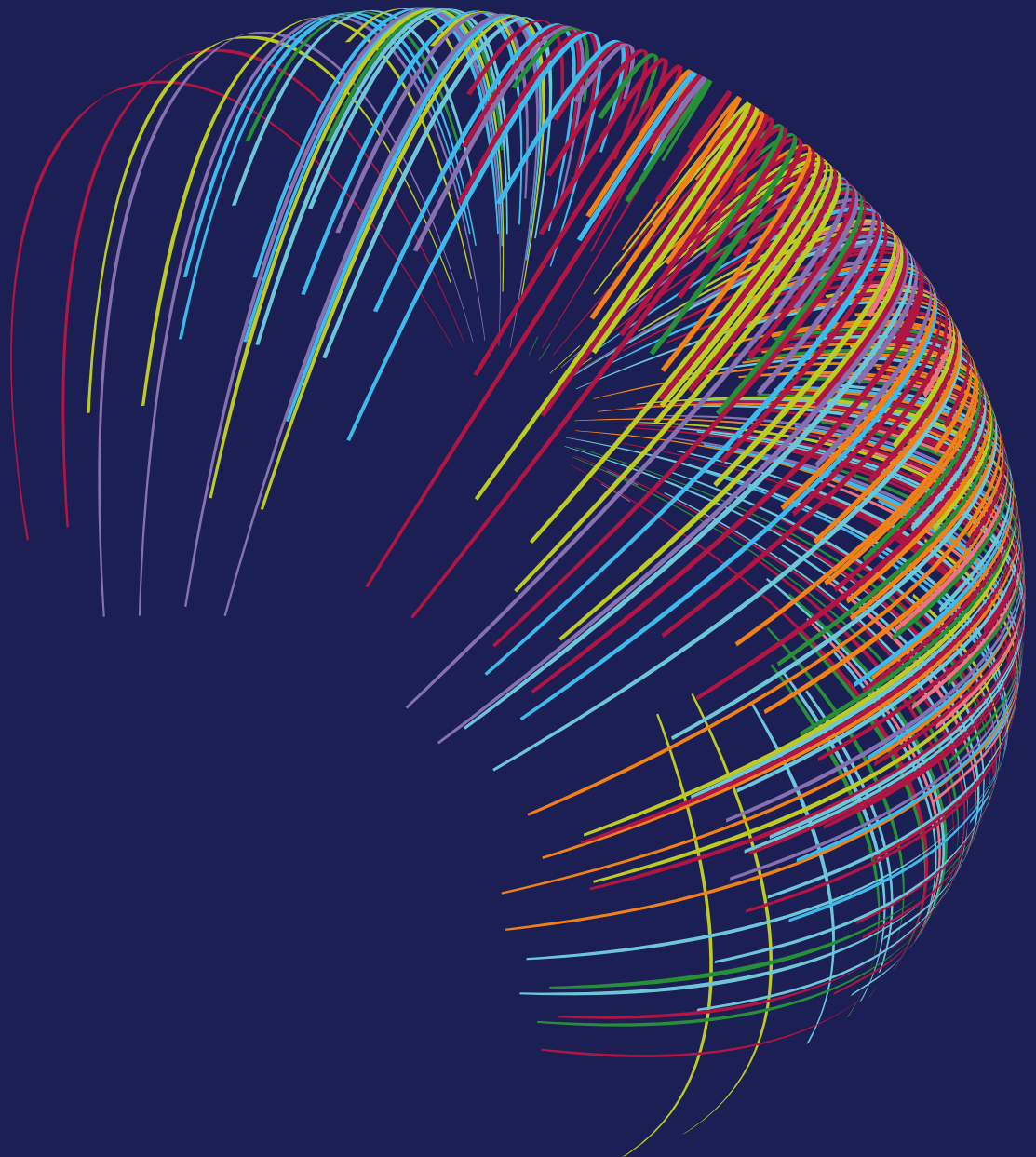





SPECIALIST
PROFESSIONAL
INDEMNITY
INSURANCE

REPORTING AND MANAGING A CLAIM

*A step by step guide to reporting and managing
a professional indemnity claim with ITIC*



ITIC
IS MANAGED
BY **THOMAS
MILLER**



The role you perform is often complex, always critical and invariably subject to a high degree of exposure and responsibility, particularly if things go wrong. So, you need to make sure your insurance is right. **ITIC is the world's leading insurer for professionals who provide services to the transport industry.**

Reporting and Managing a Professional Indemnity Claim

If you are faced with a claim, inform ITIC of the situation and follow these guidelines:

1. INFORM ITIC IMMEDIATELY

You must inform ITIC as soon as you receive a claim or become aware of circumstances which might lead to one. It is a requirement of your insurance and failure to do so may prejudice your cover. The early reporting of a claim saves you time, trouble and costs. Remember, whatever the circumstances, ITIC has probably seen something similar before.

2. DO NOT ADMIT LIABILITY

You must not make an admission of liability or settle any claim without ITIC's approval. Even an apology to your client could be considered an admission of liability. It is not unknown for people under pressure to admit liability, even if they have done nothing wrong. All liability insurances contain a provision prohibiting you from admitting liability. An admission may remove all prospects of a negotiated settlement and the claim amount can increase significantly as a result. At the same time, you could prejudice your right to recover from ITIC.

We do not expect you to offend your client by rejecting liability when you are clearly at fault. It should be enough to provide a simple acknowledgement of the claim, confirmation that you have passed it to ITIC and a statement that you cannot comment further. ITIC will be pleased to assist with an appropriate response.

3. INSTRUCTING LAWYERS AND / OR EXPERTS

Please do not appoint any lawyers (or other professional advisors) before obtaining ITIC's approval to do so. Costs incurred without approval may not be covered.

4. PREPARE THE CLAIM

The better presented the claim is, the quicker it can be dealt with. Please do not send a string of email exchanges with a note marked "claim attached". The obligations under the ITIC Rules state that any information, accounts or documents provided to ITIC must be provided in good order and in a form appropriate for the efficient handling of such a claim.

You should prepare a summary while events are still fresh in your mind, setting out the circumstances which have led to the (possible) claim against you, and send it to ITIC with all relevant documents. It is difficult to give a comprehensive list of documents required, but the following is a list of suggestions:

- copy of the communication from the claimant setting out their alleged claim;
- copies of all communications relating to the claim, including where appropriate, emails, records of instant messaging services and/or social media conversations;
- bills of lading, manifests, agency agreements, etc (ship agents);
- charterparties, fixture files (chartering brokers);
- sale file, memorandum of agreement, (sale and purchase brokers);
- management agreement (ship managers);
- survey report (marine surveyors);
- scope of work, GA, drawings and designs (naval architects);
- contract with your client;
- your standard terms and conditions.

**You should only pass this summary to ITIC.
Do not pass it on to others.**

5. HANDLING THE CLAIM

If the claim is covered by your insurance policy, ITIC will work with you to decide the best way forward. The options include paying the claim, attempting settlement negotiations or disputing liability on your behalf.

What happens in each scenario?

- If ITIC considers that you have a liability to the claimant, ITIC will authorise you to settle the claim. Once the claim is settled, ITIC will indemnify you, less your deductible.
- If liability is in doubt or there are mitigating circumstances which may serve to reduce liability, ITIC will recommend settlement negotiations. Depending on the circumstances, these could be between the parties directly, between ITIC and the claimant or ITIC may arrange for lawyers to conduct the settlement negotiations on your behalf. Once the claim is settled, ITIC will indemnify you, less your deductible. Sometimes, it may not be possible to negotiate a settlement and a form of dispute resolution will be needed to conclude the matter.
- A claim can be brought incorrectly against you or you could have a valid defence. In these circumstances, where ITIC considers that you do not have any liability to the claimant, ITIC will deny liability on your behalf. If the claimant does not agree with this assessment of liability, it is likely that they will proceed with a form of dispute resolution.

6. WORKING IN PARTNERSHIP WITH ITIC AND LAWYERS

Dispute resolution can take various forms. Litigation is the most well known but alternatives include arbitration, adjudication, expert determination and mediation. If a form of dispute resolution is needed, often a lawyer and/or other expert will be appointed to act for you. You will be expected to work closely with the lawyer and/or expert to ensure the best possible outcome. For example, you may be asked to:

- provide proper and timely information
- attend meetings
- provide witness statements and/or attend depositions
- provide dates for your availability for future hearings / trial dates
- attend hearings
- comply with any court orders



Aviation



Consultants



Designers



Marine



Offshore



Rail

A claim can be brought incorrectly against you or you could have a valid defence. In these circumstances, where ITIC considers that you do not have any liability to the claimant, ITIC will deny liability on your behalf.



7. DISCLOSURE OBLIGATIONS

If a claim proceeds to litigation or arbitration you must consider your duty to formally disclose documents to the other side. The precise rules will depend upon the jurisdiction in which the dispute is taking place, but usually include:

- the documents that you intend to rely on;
- documents which adversely affect your own case and documents which either adversely affect or support your opponent's case;
- any documents required to be disclosed by the court.

Documents do not simply mean written correspondence, and can include:

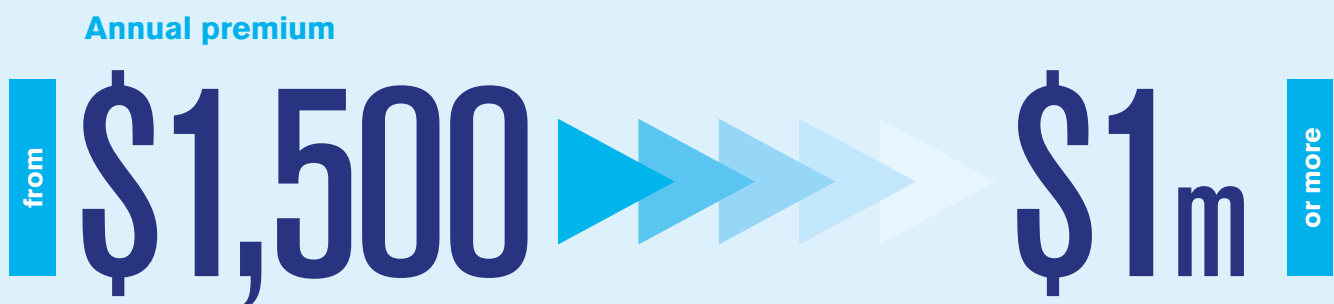
- correspondence via electronic messaging systems;
- notes of meetings, notes of telephone conversations, diary entries, day books;
- accounts;
- drawings, plans and designs;
- charterparties, bills of lading, contracts, standard terms and conditions;
- tape or video recordings (of phone calls or meetings);
- emails, computer discs, computer files, back up data, information on social media, video, film, microfilm and photographs.

You will be expected to make a reasonable search for these documents. The court will decide what is reasonable depending on the facts of the claim, including the amount in dispute, the complexity of the issues, the number of documents and the ease and expense of retrieving the documents.

Therefore you must keep relevant information safe, so that it can be retrieved and provided when required.

If you are faced with a claim ITIC offers you the following practical advice:

- do not destroy any information or documents (even ones which are not beneficial to your case);
- do not write directly on any disclosable documents (or even copies of them);
- do not tamper, change, edit or amend any files or documents;
- do not send any documents to anyone else without the approval of ITIC.





One of the most potent tools at ITIC's disposal to recover a debt is to arrest a vessel. Many Members, angered at the unpaid account, feel this should be our automatic response. While it is undoubtedly a useful weapon there are some factors to bear in mind...

Reporting and Managing a Debt Collection (Rule 10) Claim

1. UNDERSTANDING THE COVER

The purpose of the cover is to assist you with the recovery of unpaid disbursements or commission. The cover pays for legal costs incurred in the recovery of the debt, not the debt itself.

There are some aspects to keep in mind from the outset.

- (a) The legal fees covered are only those that ITIC has agreed should be incurred in pursuing the matter. A deductible may be applicable; refer to your Certificate of Entry for details of your cover.
- (b) Some debts cannot be pursued without costs becoming disproportionate to the outstanding debt. In other cases the chances of making a successful recovery are poor. ITIC cannot support claims in these circumstances.
- (c) The debt must not be older than 12 months (see further below).
- (d) Your cover is subject to the sum outstanding being greater than the sum agreed and entered into your Certificate of Entry, as the minimum sum in dispute.

2. USING THE COVER

(a) Notify us promptly (and at the latest, within 12 months)

In many jurisdictions a creditor will be time-barred from pursuing a debtor after 12 months, especially if relying on a maritime lien. In addition, it can become more difficult to pursue claims if the debt is left outstanding for a long period, as the debtor may cease to operate. It is for these two reasons that ITIC's Rules require that a Member must notify us of the debt within 12 months.

(b) Prepare the claim

The better presented the claim, the quicker it can be dealt with. Please do not send a string of email exchanges with a note marked "statement attached".

The claim may have to be presented to a court at short notice. It will greatly help your case if the file is presented in a "judge friendly" manner. Please provide papers that are ordered. It may be necessary to support disbursement accounts with relevant vouchers. Remember a debtor can use any missing or unsupported documents to try to delay or avoid payment.

You should always provide (at the very least):

- i) the name and contact details of the debtor;
- ii) supporting documents such as invoices and/or relevant charterparty clauses or agency agreements/appointments;
- iii) copies of previous demands for payment;
- iv) any relevant correspondence between you and the debtor.

(c) Other considerations

Commercial relationship:

Please consider your commercial relationship with the debtor before asking ITIC to commence proceedings or issue letters of demand. Clearly, threatening or commencing proceedings against a debtor can (and probably will) damage your commercial relationship with them. If this is a concern for you, you must consider

2. USING THE COVER

(continued)

it before taking any action. If you are part of a group, you should check if the particular debtor is a client of another part of the group. In addition, check with other group companies that they do not have a debt with the same debtor. ITIC has in the past prepared an arrest of a ship only to be told at the last minute not to proceed with the arrest because the debtor is an important client of another part of the Member's business. Therefore, you must check internally before commencing proceedings so that wasted costs are not incurred.

Time and commitment:

Please consider the amount of your time that will be needed when you're involved in proceedings. If a claim is issued you will need to co-operate with ITIC and your lawyers at all times. This may involve attending meetings, reviewing and preparing documents, preparing witness statements or attending depositions and finally, perhaps attending court hearings. ITIC has had Members in the past progress claims, only to decide that the process is taking too long or is taking up too much management time and want to abandon the process. However, once the proceedings are started, it can be costly to end them prematurely, if they can be stopped at all.

It should also be noted that by commencing debt collection proceedings, you can open yourself up to a counter claim. For example, the debtor may claim that they have not paid you for the service you provided because they allege you performed that service negligently. Therefore, instead of them owing you money as you claim, they may allege that you have caused them a loss and claim from you accordingly.

Arresting a vessel:

One of the most potent tools at ITIC's disposal to recover a debt is to arrest a vessel. Many Members, angered at the unpaid account, feel this should be our automatic response. While it is undoubtedly a useful weapon there are some factors to bear in mind.

- i) The types of debt for which you can arrest vary between jurisdictions. For example you can not arrest for shipbrokers commission in a number of countries.
- ii) Formalities. Some countries will require all the documentation to be formally translated into their domestic language. That may be impossible to arrange if the vessel is only in port for a short call. Other formalities that may be required include providing notarised powers of attorney appointing lawyers. Again this can take time and Members will need to be aware of these requirements.
- iii) Arresting a vessel will not automatically give you an enforceable judgment only (potentially) provide security for your claim. You will still have to litigate the claim.
- iv) If the debtor does not pay and the vessel is sold then your claim may rank below others in the way the sale proceeds are distributed. In many cases after the court's fees and expenses, crew claims and the mortgage have been paid the remaining debtors may get nothing.
- v) You may also be liable, in some countries, for the costs of maintaining the vessel whilst it is under arrest.
- vi) If you are judged to have arrested a vessel wrongfully you may become liable to the debtor for damages and/or costs.
- vii) Counter security. The court may require you to put up counter security. The amount and the nature of the security varies from country to country. Please note the security has to be provided by you not ITIC.

Reporting and Managing a Cash in Transit (Rule 12) Claim

1. UNDERSTANDING THE COVER

The purpose of the cover is to provide you with insurance for your principal's cash during transport from your office or a bank to a ship.

2. USING THE COVER

You must be aware of the policy endorsement details regarding the maximum amount of cash which can be carried at any one time and whether the money needs to be accompanied by more than one person. If cash is stolen, ITIC must be immediately notified of the loss. This must be followed up with a police report of events.

The general exclusions are:

- Shortage due to errors and omission
- Mysterious disappearance
- Theft by employees

Reporting and Managing a Loss of Commission (Rule 12) Claim

1. UNDERSTANDING THE COVER

The purpose of the cover is to indemnify a shipbroker for the commission that they would have earned if a charterparty had not been cancelled. There are two levels of cover. Either for commission lost as a result of the total loss of the ship or due to a wider range of insured perils including piracy, breakdown of engines and strikes.

2. USING THE COVER

You must notify ITIC immediately of the loss.

Documents which will be required include:

- a copy of the charterparty / recap
- notice of cancellation from the shipowners or charterers
- in the case of a total loss, we will usually require a document from the hull underwriter.

The general exclusions are:

- Insolvency or financial default
- Contracts of affreightment
- Ships greater than 25 years old
- Ships on a demolition voyage



**If the transport industry needs your services,
then you need the services of ITIC**



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ITIC
IS MANAGED
BY **THOMAS
MILLER**

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 fax + 44 (0)20 7338 0151 e-mail ITIC@thomasmiller.com web www.itic-insure.com
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