

September 2001

# intermediary

## DEBT COLLECTION

US\$50 million recovered

Ship arrest

## LOSS PREVENTION

Dangers of separate  
crew insurance

NVOC bills of lading

Web-site wordings



THE PROFESSIONAL INSURER

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# welcome

Welcome to this edition of the Intermediary. Since the last edition the Club has reached a landmark. We have now collected over US\$50 million of unpaid disbursements and commissions on behalf of our Members. Additional Legal Expenses and Debt Collection Insurance, Rule 10, is increasingly popular and in this issue of the Intermediary you will find several articles relating to the collection of unpaid disbursements and commissions. The Club's cover is a true insurance covering the costs of employing lawyers, and other third parties, to pursue claims on your behalf.

Last year was the Club's 75th anniversary and as a celebration we organised Forum 2000, which brought together Members from all over the world to discuss issues of common interest. A lot has happened in a short period and nowhere is this more true than in the world of e-commerce. In this issue we look at the current situation in this rapidly developing sector. We also give practical advice on website disclaimer wordings.

Our regular Intermediary interview is with Barbara Fletcher of the Institute of Chartered Shipbrokers. Barbara provides her views on education and training and outlines the world-wide work being undertaken by the ICS.

We hope that you will find the articles both informative and interesting.



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# Ship arrest

**When an owner or charterer defaults on his obligations there is an understandable desire for instant decisive action in the form of arresting a ship. This is often, but not always, a prudent step.**

A number of issues will dictate whether the ship should be arrested. Although international conventions do promote an element of uniformity, laws differ according to the jurisdiction where the arrest will take place. Local requirements need to be considered on a case by case basis. A major issue is the identity of the debtor. Different considerations will apply if you are pursuing debts incurred by a charterer. Ship arrest is not totally excluded if the debt was incurred by the charterer but the remedy is much more restricted. We will start by looking at owner's debts.

## Owner's Debts

When the Club threatens the arrest of a ship, the owner will quite often pay up without further action as he knows it is possible to arrest the ship as long as the Member has a maritime claim in the country where it is arrested. However, it may not be possible to arrest for the type of debt the Member is

pursuing. A common example is shipbrokers' commission, although the position may be changing. [see page 3]. In many situations, when an arrest is actually carried out, the owner will pay up immediately or put up security in order not to have his ship detained in port for a long period of time. The security is usually in the form of a bank guarantee, bond or P&I Club letter of indemnity. Some countries, such as Spain, will also require the arresting party to furnish counter-security. Many Far Eastern jurisdictions also have this requirement. When security is in place, the Club will arrange for legal action to be commenced against the owner. One of the issues that may influence the decision whether to arrest a ship in a particular country is if the subsequent proceedings have to be commenced in that jurisdiction. It is a mistake to commit oneself to an unfavourable jurisdiction. In practice the Club has only been involved with a few cases where the claim has ultimately resulted in a trial. Normally an out of court settlement is reached

Arresting a ship may not, however, provide security for a claim. The worst financial situation that can arise is that the Member arrests the ship, only for the mortgagee bank to step in and claim priority. The priorities accorded by local law to various types of claim are therefore very important. In most jurisdictions the mortgagee bank and crew have priority over shipbroking and ship agency claims. However, there are a small number of countries which give priority to the ship agent's claim for "necessaries" over the rights of the mortgagee bank. This is often done to protect local interests and will apply when the agent is located in the same country as the ship is arrested in and the bank is foreign. The USA and France are examples of jurisdictions offering this type of protection. Unfortunately, such jurisdictions are rare and the majority give priority to the mortgagees. There are no jurisdictions to our knowledge which hold that a shipbroker's claim for commission has priority over the mortgagee bank or the crew's claim.

Just because you have a right to arrest does not mean that it is always prudent to exercise it. In some circumstances, it is best to allow the ship to continue trading. As long as the ship is trading, she is earning freight which can be attached, or assigned to the creditor. Once the ship is arrested other creditors will join in. This in turn will cause the bank to take action and it is very likely that you will receive nothing. Effective debt collection often involves considering the commercial risks of action or inaction.

We are often asked about "sister ship" arrests. These occur where the owning company of Ship A, is the same as that of Ship B. It is possible in some circumstances to arrest Ship B for the

debts incurred by Ship A but the availability of the remedy is declining. It was useful when pursuing debts from the successors of the large Eastern European fleets. In recent years, however, these ship owners have realised this weakness in their owning structures and have set up one ship owning companies to protect their fleet. Most countries in the world permit "sister ship" arrests. Certain countries, such as South Africa and France, permit the arrest of an "associated" ship. This is possible when it can be proved from the ship's registry that the Directors or Officers of the ownership companies are virtually the same.

## Charterer's Debts

Ship agents appointed by charterers, who do not pay them, may still be able to take action against the ship in certain limited circumstances. This is possible because some debts give rise to what is known as a maritime lien. In simple terms the debt attaches to the ship and legal action can therefore be taken against the ship.

There are some important limitations to this form of action. The disbursements that can be recovered are from a limited range and include items such as pilotage, harbour and tug dues. The agent's own fees are not included and cannot be recovered in this way.

Agents must exercise their rights promptly. The time allowed to bring an action against the ship may be as little as six months or a year, depending on the jurisdiction involved.

Ship agents should also consider whether they were actually appointed by the charterers. Some voyage charterparties provide that the charterers have the right to nominate the agents, who are then employed by

the owners (e.g. Shellvoy 5, clause 24). In these cases the owner and not the charterer is the debtor.

Another form of action is the recovery of funds from the time charterer through the attachment of bunkers on board a ship. This form of action is useful if a charterer owes funds for services rendered to a ship, but the hire of that particular ship comes to an end, and the debtor goes on to charter another ship. The bunkers are normally owned by the time charterer, and as long as the Club has solid evidence to this effect, we will attach the bunkers. Again, this type of action depends on the jurisdiction in which one is arresting. The USA and Northern Europe are good examples of jurisdictions where this type of action can be taken.

The main problem when seeking to arrest bunkers is that it is difficult to ascertain whether the debtor/charterer actually owns the bunkers (they could be owned by the shipowner or by a voyage charterer). Another practical difficulty could be that in order to secure the Member's position it may be necessary to remove the bunkers from the ship (e.g. by bunker barge). This can be expensive and in some ports would not be allowed. The best time to arrest bunkers is when the ship is loaded and ready to sail, not when the ship is under arrest or idle awaiting orders.

The arrest of ships is a useful weapon but one which is not always available. It is sometimes necessary to instigate legal proceedings directly against the debtor. We will look at such debt collection procedures in a future issue of "The Intermediary".

# Arresting for Shipbrokers' Commission

In the March 2000 edition of *The Intermediary* we reported on major changes to the law affecting shipbrokers' commission, as was brought about by the coming into force of the Contracts (Rights Against Third Parties) Act 1999. Although it has yet to be tested by the Courts, it appears that the new statute will permit shipbrokers to arrest a ship for charterparty commission.

The grounds upon which a ship can be arrested within the English courts' jurisdiction are set out in the Supreme Court Act 1981. In order to obtain an arrest the broker would have to show that the commission claim fell within one of its provisions. Section 20(2)(h) of the Act provides that a ship can be arrested where there is a claim arising out of, or relating to, "the use or hire of a ship". Before the passing of the Act a shipbroker could not take action directly against an owner on the basis of the charterparty commission clause, because of the Doctrine of Privity. English law held that only parties to a contract, the owner and charterer under a charterparty, had rights and obligations which they could enforce. A non-party, such as a shipbroker, could not simply sue the owner, even though the commission clause named the shipbroker and said he should receive a commission. This was changed by the 1999 Act, and for the purpose of exercising his right to enforce the commission clause, the Act has placed the shipbroker in the same position as if he had been a party to the contract. In the circumstances it appears clear that a claim for the enforcement of a commission clause is one which arises out of the "use or hire of a ship". Chartering brokers may therefore find that their ability to enforce their rights has been increased.

The position is different for sale and purchase brokers. It is market practice that the seller pays the commission which is due on the delivery of the ship. That is unfortunately the very moment that the seller has disposed of the ship and, as a single ship company, the sole reason for its existence. The 1996 New Zealand case *S.O.S. Maritime Brokers -v- The Ship Dana Star* was unusual as the buyers had specifically agreed to pay their brokers. The New Zealand high Court held, however, that the obligation to pay commission to a sale and purchase broker did not arise out of an agreement in relation "to the use or hire of a ship", which was the equivalent provision under English law. Sale and purchase brokers regrettably therefore are unlikely to have gained any further rights as a result of the passing of the new law.

# http:// SHIPBROKERS' Website Wordings

**ITIC is willing to give its views as an insurer on a wide range of documents that Members use in the course of their insured businesses. The Club's managers will frequently review liner agency agreements, ship management contracts and shipbrokers' valuation certificates. A recent trend has been for shipbrokers to create websites to promote their businesses and provide their customers with access to a range of information and services. It is important that Members consider including appropriate terms of use on their websites to protect themselves against claims from users.**

In common with paper based terms and conditions it does not matter how well the terms are drafted if they are not properly incorporated in the dealings between the parties. The access page to the website should therefore clearly state that use of the website is subject to the conditions of use. These should then be accepted by "clicking" on a button. The terms and conditions themselves should also be accessed through a specific button. A large number of websites sensibly incorporate a provision that the host reserves the right to update the terms from time to time and therefore the user should check the terms on each occasion before using the website.

The contents of the conditions of use will vary according to the function the site is intended to perform. The terms and conditions that would be appropriate to use for exchanges, electronic auctions or other trading platforms are beyond the scope of this article and would need detailed consideration. There are, however, a number of general points that apply to the majority of sites providing market information.

The majority of shipbrokers' websites provide market reports. Whether published on paper or electronically these should contain wording restricting the potential for a claim. A general report or market circular of ships and cargoes should state that while care has been taken in compiling the information it is given without guarantee. Another useful provision is that the information is provided as a general guide only and is not intended for any specific purpose.

One of the problems in providing detailed market analysis is that there is a grey area where market knowledge and assessment is combined. A number of reports sensibly point out that factors such as market confidentiality may mean that the information is incomplete and in addition the report may be based on assessment. An example would be ship values where no sales information for comparable ships is available. In addition the terms and conditions should point out that information that has been obtained from third parties, is believed to be accurate, but is subject to limited audit and validation procedures.

A market report issued in physical form will be dated and although it does not have a "sell by date", it is clear that the information becomes obsolete. Publication of the same information on a website is slightly different. A website is maintained on an ongoing basis by the broker. If the information is out of date it could be argued it should simply be removed. It is therefore advisable to put a provision in the terms and conditions that while the site is updated on a regular basis, the company data collection procedures are ongoing and accordingly it cannot be guaranteed that the information contained on the site would be the latest that has been received. Another consideration is that the terms and conditions should make it clear that you cannot guarantee that the website will be on line at all times.

An aspect of websites is their ability to link up with other such sites. When providing such links it should be specified that these are only for the convenience of a user and that the host is not making an endorsement or recommendation of that site. In the circumstances no responsibility can be accepted for any consequences of access to third party sites.

A number of sites provide access to special areas via a password. If this is the case the terms and conditions should provide that the user agrees to maintain the confidentiality of the password and is responsible for any misuse.

One of the most frequently expressed fears is the possibility of being held liable for spreading a computer virus. A clause should be inserted to reduce the risk of a claim. This would provide that while the host has taken reasonable steps it cannot be guaranteed that the site, or any site to which there is a link, is free from viruses or anything else that may interfere with or damage the operation of the users' computer systems. The users should be advised to use current virus scanning software. Another useful addition is a notice setting out that the information is protected by copyright. One of the first cases ITIC handled in relation to the internet was to prevent the re-publication of our Members' market circulars on a website.

The final consideration is that it is important that the terms and conditions of use contain a notice as to the law and jurisdiction that govern disputes.

The above points are a general guide to some of the provisions that could usefully be included in a ship brokers' website. The managers of ITIC will be happy to discuss Members' specific websites with them.



# the right decision

**The Club prides itself on its sympathetic claims handling and cost effective claims settlements. In many cases a Member is facing a claim from his customer and is understandably anxious to protect his commercial relationship by settling the claim as quickly as possible. These factors, and the fact that lawyers do not come cheap, all contribute to the vast majority of claims being settled without recourse to courts or arbitrators.**

Claims against ship managers are often particularly complex and involve substantial sums. A successful defence can never be guaranteed and the cost of failure can be very high. However, the circumstances of a recent case were such that it was left to three arbitrators in Vancouver to decide on the Member's liability.

The facts of the case were that the Member had been appointed as the manager of the "OPAL WOOD" by the ship's Canadian owners. In 1998 the ship was on passage from a British Columbian port to Vancouver with a licensed Canadian pilot on the bridge. In the course of the voyage the "OPAL WOOD" was required to make a turn to starboard in order to pass between the mainland and a small island. The weather was good and the manoeuvre should have been executed without difficulty. However, at the last moment the master realised that the pilot had delayed giving the order to alter course, as a result of which the "OPAL WOOD" was in danger of grounding on the island. Despite the master's best efforts this is what happened a short while later, and the "OPAL WOOD" suffered serious bottom damage.

Repairs were subsequently carried out in Vancouver and the substantial sum involved was recovered from their hull underwriters by the owners. It was clear that the casualty had occurred as a result of an error in navigation and this was confirmed in the findings of the official enquiry.

Some two years later the managers received a claim from the owners for an amount in excess of

US\$2,000,000. The bulk of the claim was for loss of use of the ship and included the deductible on the owner's hull policy. The claim was based on the allegation that the managers had failed to ensure that a proper bridge management system was in place on the "OPAL WOOD", as evidenced by the fact that there had been only minimal exchanges between those on the bridge and the pilot prior to the grounding.

Lawyers were appointed in Vancouver to protect the Member's interests and detailed investigations made into the veracity of the owner's allegations. As a result it became clear that the Member had in fact taken all necessary steps to introduce approved bridge management systems on all the ships under his management, including the "OPAL WOOD". The fact that the master and second officer had failed to implement this system prior to the grounding was not the fault of the Member.

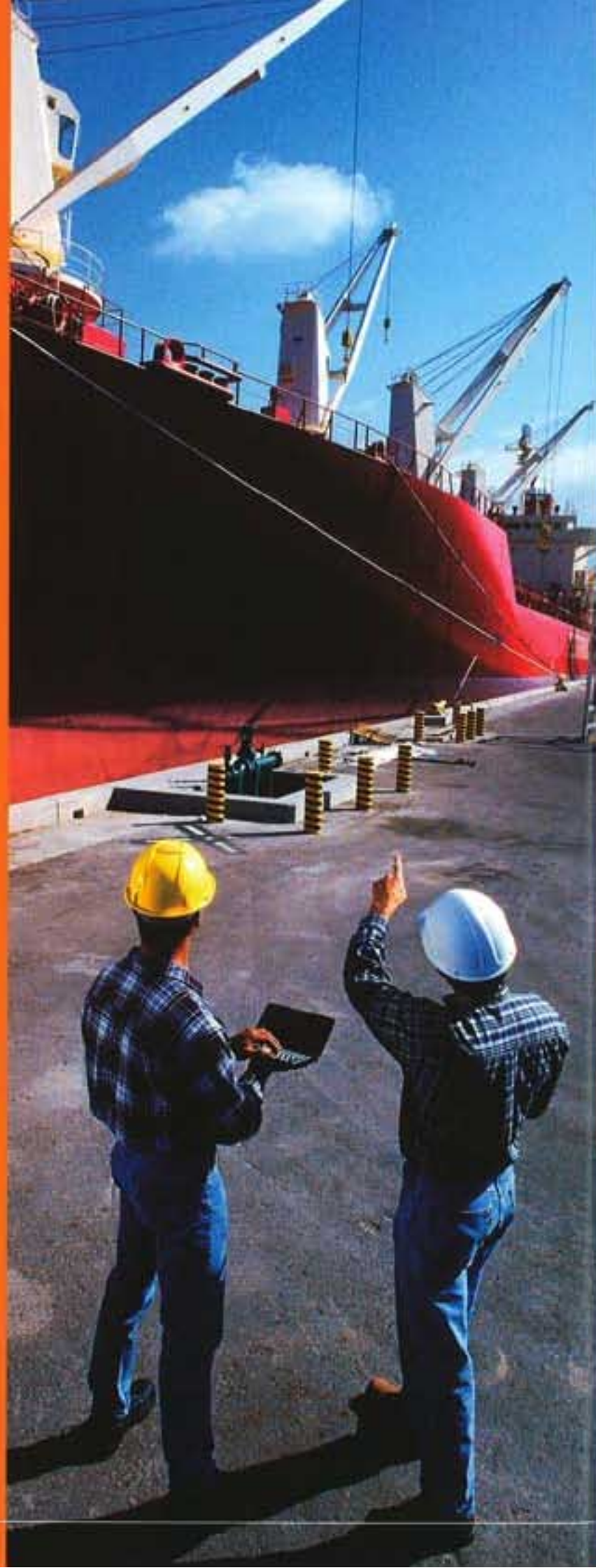
The owner's lawyers continually increased the costs of the defence by such means as insisting that lawyers from Vancouver travel to Scotland to take the deposition of the master. Expert witnesses were retained and travelled to Vancouver for the arbitration hearing together with a number of the Member's staff from various countries.

On several occasions in the period leading up to the hearing, the owner's lawyers suggested a compromise settlement be discussed. However, both the Club and its Member felt strongly that this was a claim that should be decided by the arbitrators and no settlement discussions took place.

The arbitration hearing was concluded on June 1st, 2001 and the findings were declared to be ready for publication only eight days later. This swift decision caused some concern and it was therefore with considerable relief that the Club received the good news that the arbitrators had found in the Member's favour. Unfortunately, both sides were required to bear their own costs but this still resulted in a considerable saving when compared to the amount of the owner's claim. There is always a risk in leaving a judge or arbitrator to decide on the merits of a claim, but in this instance there is no doubt that the right decision was made.

# Standard Trading Conditions for Marine Professionals

A wide variety of companies providing professional services to the transport industry choose ITIC as their professional indemnity insurer. The Club's membership includes surveyors and consultants, adjusters, insurance correspondents, marine engineers and oceanographers.



conditions then I have absolutely no doubt that the claimant would be pressing ahead with its claim and we would be under pressure to settle at a much higher figure. This is just one example of how trading conditions can be of value.

## Time Limits

This is another very good weapon in a defensive armoury. Time limits must be reasonable. Under English law the time limit for bringing a claim for economic loss is six years. By contract the parties can reduce that period. In shipping circles one year is commonplace e.g. Hague-Visby Rules and nine months is reasonable (BIFA conditions). In a recent Court of Appeal decision in which my firm was involved, a six month time limit was regarded as reasonable.

**Ocean Chemical Transport Inc and Another -v- Exnor Craggs Limited [2000] 1 Lloyd's Rep. 446 - the "JULIUS HAMMER"** concerned a claim by ship owners against our clients who were bunker traders. The judge at first instance and the Court of Appeal held that in the context of a contract to supply bunkers to a vessel, a six month time limit for the bringing of claims was adequate and reasonable. The court held that, in the context of bunker transactions, six months was a reasonable period within which the shipowner would become aware of any problem with the fuel and have time to bring a claim. In this particular case the ship owners brought their claim after the expiry of the six month time limit and their claim was therefore dismissed.

## OFFENCE

Turning now to offence. These are terms and conditions which can help you with your own claims or which positively set out what you will and will not do.

## Defining the Brief

A condition which specifies that the surveyor's obligations are to comply with the specific written instruction given by the principal, and not to do any further work unless specifically authorised, will clearly limit the ability of the principal to claim subsequently that, notwithstanding a specific instruction which had been given, the surveyor/consultant was under an obligation to do more than was simply requested e.g. to do further research or



make other enquiries or to venture an "expert" opinion rather than simply reporting facts.

## Indemnities

When acting for a principal it is not unreasonable for you to expect the principal to indemnify you if you incur a liability which is not due to your fault and was incurred as a result of carrying out the principal's instructions. Similarly an indemnity can cover the situation where you prepare a report for a principal for a specific purpose and the principal then distributes it to a third party who uses it for another purpose. It is possible that the third party may seek to bring a claim against you if they feel the report was inadequate or inaccurate and in this context you should be entitled to an indemnity from your original principal. An example of this is where a surveyor prepares a condition survey in order to establish whether a vessel is acceptable for a single voyage charter. The principal uses the survey report for a quite different purpose, e.g. for demonstrating the vessel is suitable for sale to a buyer. Had you known that the report would have been used for this purpose you would not have prepared the report in the same way, and it is only right that the principal should indemnify

you if you are put to the cost of having to justify your original survey when the buyer is disappointed by the ship he purchases! This may seem a fairly far fetched example, but it does happen, and the conditions which define the brief and establish a right of indemnity can be extremely helpful in this situation.

## Payment Terms

There is ample opportunity in a set of conditions to set out payment terms in detail. These can include the normal credit period which is to be extended to the principal, the fact that no deductions or set offs can be made from the amount due to you, the rate of interest payable on overdue balances and any other default provisions.

## Termination

Your conditions should specify when you are entitled to terminate your retainer. If it becomes apparent to you that your customer is impecunious or if he fails to give you proper, clear, concise instructions you should be entitled (but not obliged) to terminate the instructions and charge for the work you have done to that date. In the absence of a specific condition to this effect it may be very difficult to claim payment in these circumstances.

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#### Incorporation

Time and time again I am asked to advise on whether a company's terms and conditions can be relied upon either in defence of a claim brought against them or to assist them in pursuing their own claim. In the majority of cases the wording of the terms and conditions are not controversial and would assist the client either in defending or in claiming. The major problem is demonstrating that the terms and conditions formed part of the contract between the client and his principal. Under English law you must draw your contracting party's attention to your terms and conditions before you form the contract. It is therefore imperative that a reference to your terms and conditions, ideally the full set of conditions, is included in any quote or estimate which you give to your principal before he confirms your instructions. An endorsement such as:-

"all work undertaken subject to our standard trading conditions overleaf (or copy available on request)" is invaluable in demonstrating that the conditions were brought to your contracting party's attention before you formed the contract.

I had a case some years ago where a client of mine wanted to claim an indemnity from a Belgian sub-contractor. The client was one of a number of intermediaries involved in the transportation of a project cargo and was facing a substantial claim from the cargo owner. Under a particular provision of Belgian law the claim against the Belgian company was subject to a six month time limit. By the time I was instructed six months had already expired. The Belgian contractor relied on his trading conditions as evidence that Belgian law was incorporated and the six month time limit therefore acted to prevent my client's claim. What the Belgian contractor had done every year was to write to my client in January wishing him a successful year's trading and reminding my client that all work undertaken by that Belgian company would be subject to its trading conditions which were enclosed with the letter. The Belgian company had kept copies of the letters which were obviously standardised and sent to all their regular customers. Faced with this evidence, the English court held that the Belgian contractor was entitled to rely on its conditions as they had clearly

been brought to my client's attention in the January of every year and therefore subsequent contracts were clearly subject to them. My client hadn't even read the letters but had simply binned them. It struck me that this is a very good way of demonstrating that your terms and conditions apply to the relationship you have with your principal. A brief letter saying:

"Hope you had a good New Year and that this year is successful for both of us. As you know all work we undertake is subject to our Trading Conditions (attached). Look forward to doing business again this year.

Yours sincerely,

PS Hope the price of oil falls soon!"

can be very helpful in demonstrating that your terms and conditions apply to any work for that customer. If you receive such a letter do not bin it, check the conditions and if you don't like them write back and say so.

#### Brussels Convention

It is important that you can demonstrate that your terms and conditions were agreed to by your principal, particularly with regard to the jurisdiction clause. Within European countries the Brussels Convention regulates the jurisdiction in which proceedings should take place. The normal rule (Article 2) is that you must sue the defendant in the defendant's domicile. If, therefore, you are claiming for your unpaid invoices from a principal who is domiciled in another jurisdiction, then under the Convention you have to sue that company in its jurisdiction. This may not be a particularly attractive

**"Hope you had a good New Year and that this year is successful for both of us. As you know all work we undertake is subject to our Trading Conditions (attached). Look forward to doing business again this year."**

proposition. For you to be able to rely on your own jurisdiction clause in your terms and conditions you need to demonstrate under Article 17 of the Convention that there has been an agreement that any disputes should be referred to a particular jurisdiction. The mere existence of your trading conditions will not be sufficient to satisfy Article 17. However, the fact that you may have secured your client's agreement, by them acknowledging your terms and conditions before a contract is formed, would be satisfactory evidence that another jurisdiction had been selected by the parties for the purpose of litigation. It is therefore quite important that you take steps to ensure you can demonstrate that your principal had the opportunity or actually did see the conditions before the contract was formed.

#### Conclusions

Both the conditions used to defend claims and the conditions used to pursue claims have great advantages to you. I cannot think of a single disadvantage of using trading conditions. You may feel that your principals will not agree to your terms and conditions. Even in cases where your principals object to your terms and conditions they will at least appreciate that you are a professional and thorough organisation. I suspect that in many cases your principals will simply agree without even checking the conditions. In 99 percent of cases your trading conditions will not be needed and business will be conducted properly and without any disputes arising. In the 1 percent of cases where disputes do arise your trading conditions could prove vital to you.



# the dangers

## of Placing Separate P&I Insurance for Crew

**A ship owner can either place the insurance of his ship with underwriters himself or alternatively pass the responsibility of insuring the ship onto the ship manager under the ship management contract.**

Usually the Protection and Indemnity (P&I) cover chosen is for all P&I risks, including that of crew. However, a ship manager can place a separate crew P&I insurance at the request of the ship owner. The reason for this split in insurance is either for administrative reasons (i.e. the manager can deal with the crew claims directly), or tax considerations as a ship owner may not wish to be seen as the employer of the crew.

The ship owner will then exclude crew cover from his P&I Club insurance. This leaves the responsibility for crew insurance in the hands of the ship manager, which can be to his advantage as it can help build loyalty with that crew and develop a long-term relationship with the crew P&I insurers.

**The Club has seen some policies as low as US\$200,000 per claim per crew member. We would recommend a minimum of US\$5,000,000 per claim.**

However, it is important that both the ship owner and the manager understand that serious problems can arise if crew P&I insurance is placed separately from that of the ship owner's P&I cover. The ship manager should consider the following:

- 1. has he made it clear in his ship management contract what type of crew insurance he will be purchasing?  
Considerations in this respect include:
  - whether he is insuring the crew just for their contractual liability under local crew conditions;
  - whether insurance is also required for claims by crew in tort. This may be difficult for the ship manager to place as most claims in tort are against the ship owner, not the ship manager;

- 2. the limit of liability to be purchased. The Club has seen some policies with limits as low as US\$200,000 per claim per crew member. We would recommend a minimum limit of US\$5,000,000 per claim. The ship owner should also agree to the limit being purchased before such cover is placed, as he may wish to take out an excess cover.
- 3. if the manager is only placing crew P&I insurance to cover contractual liabilities under local crew conditions, the owner will need to take out cover for claims by the crew in tort. Some P&I clubs will offer the owner cover that excludes P&I risks insofar as they are covered by the crew P&I insurance purchased by the manager, but which will cover claims against the owner in tort. Another option is for each party to be named as a joint assured on the other's P&I insurances (for both the ship owner and the crew), but this may not always be practical or tax efficient.
- 4. Even where the ship owner and the ship manager have properly insured their respective risks there have then been disputes between the two P&I insurers as to which insurer should face the loss. A crew P&I insurer paid a contractual liability claim for crew injured and then pursued a recourse claim against the ship owner for providing an unseaworthy ship. The crew member also pursued a claim against the ship owner in tort. The P&I Club dealt with the claim in tort on behalf of the owner. However, there was a potential dispute between the crew P&I insurer and the ship owner's P&I insurer as to whether the claim should fall under the tortious or contractual cover. Not an ideal situation!
- 5. These gaps in cover between the ship owners and the ship manager's P&I cover for crew can be avoided by careful planning between the owner, the manager and their respective insurance brokers. Ironically, the premium saved by excluding crew P&I risks from the owner's P&I policy is minimal, but without careful thought the uninsured risk can be enormous. If in doubt discuss this with your insurance broker.





Barbara Fletcher

## Training and Education -

an interview with Barbara Fletcher of the Institute of Chartered Shipbrokers

**The importance of training can never be underestimated. One body synonymous with the provision of training and education in the maritime field is the Institute of Chartered Shipbrokers (ICS).**

The ICS is not a new name in training and education. Founded in 1911 to represent intermediaries involved in the chartering of ships, by the 1920s it had received a Royal Charter enabling it to offer professional qualifications to those working in shipping. Today, through its correspondence college, Tutorship, the ICS offers a wide range of qualifications and courses for shipping professionals everywhere including dry cargo chartering, ship management, sale and purchase, liner trades, port agency, shipping law and marine insurance.

"Tutorship not only offers courses for those already working in shipping but also assists those embarking on a career in the shipping business or working in support departments, such as marketing, within a shipping firm," says Barbara Fletcher, director at the ICS. In fact, it is those with little or no exposure to ships or shipping that one of the Institute's most recently launched courses is aimed at. Understanding Shipping, a nine-module course, combining multiple-choice exams, essays and an assessment interview with a member of the Institute, covers ships and trades, the business and the players, bills of lading, port agency, bulk carrier and tanker documents, liner agency documentation, chartering, ports and cargoes, and ship management and operations.

Launching new courses is one thing. Delivering them to the students who need them is another. In a bid to make training more accessible and cost effective, Understanding Shipping became the first ICS course to be delivered using video conferencing. Funded in part by the Suffolk Technical and Enterprise Council, the video conference link enables students overseas to receive tutorials

directly from a tutor based at the ICS office in London. Using sophisticated software, the tutor is not only visible on screen, but he or she can also use the screen as an overhead projector and a blackboard," explains Barbara Fletcher.

The course, which was initially launched in November last year, is being assessed for its suitability for use in other countries and in conjunction with other ICS courses. "This is a very good way of investigating what will be a key method of delivery in the future. Through the use of video conferencing, we are meeting demand for the delivery of shipping education overseas in a cost-effective way," says John Barclay, education consultant to Tutorship.

Tutorship also helps prepare students for their qualifying examinations for membership of the ICS. In 2000 alone, as many as 1,500 students entered these examinations. Reflecting the widening reputation of the ICS qualifications, these exams were sat in over 80 different centres around the world. "I am particularly pleased that more and more centres are being made available at which candidates can sit the examination," says Barbara Fletcher. "This is, of course, making the examinations more accessible and emphasises the point that the Institute is a truly worldwide organisation with an influence stretching to areas thought virtually out of reach only a few years ago," she adds.

Along with its own courses, the ICS also collaborates closely with a number of leading names in the shipping world in the training of their new recruits. For example, in 1999 the ICS trained more than 400 students on behalf of P&O Nedlloyd. The shipping community also gets involved with the Institute's courses and examinations through its prize-giving ceremonies. Held in London each year, the most outstanding students in a variety of disciplines receive prizes from the likes of Braemar, Clarksons, E A Gibson and The Baltic Exchange in recognition of their achievements.

However, it is not only training and education that the Institute has become well-known for. It also plays a key role in giving its members a voice at a national and international level. Today, it has over 3,500 members, sixty per cent of whom are overseas

These members enjoy local support from the ICS through its network of branches reaching as far as Australia, New Zealand, Benelux, British Columbia, Calcutta, Cyprus, Germany, Hong Kong, Ireland, Chennai, Mumbai, Pakistan, Singapore, Sri Lanka and the United Arab Emirates, along with ten branches in the UK. Barbara Fletcher points out that "supporting our members on a local basis is an important part of the service we provide. Not only can we bring members together this way, we can also provide them with a tool to help achieve change."

With a highly active and influential liner committee and Federation Council, the Institute's ability to bring together the shipping community and the government to help raise the profile and importance of the shipping industry is one of its less recognised roles. The liner committee, for example, has been busy campaigning regarding congestion at certain UK ports, the costs involved with using x-ray scanners to detect illegal immigrants, and the use of 44-tonne lorries to deliver cargo directly to seaports as well as railheads.

It also works closely with the Federation of National Associations of Ship Brokers and Agents (FONASBA) in the standardisation and updating of documentary terms and conditions and is one of the founding members of the UK Maritime Forum aimed at promoting high standards and best practice. Among the topics already tackled by the Forum is the environmental impact of the disposal of oilrigs and other structures in the North Sea.

The ICS will continue to be synonymous with the provision of high-quality training and education in shipping. Barbara Fletcher also firmly believes that through its links with BIMCO, IMO, the Chamber of Shipping, the Parliamentary Maritime Group, UNCTAD, FONASBA and others, the Institute will continue to give its members the opportunity to put forward their own considered opinions. As the Institute's website states, "A group speaking with one voice will have a greater impact and influence than individuals speaking separately, even if they are saying the same thing".

Our thanks to Barbara Fletcher, Director of the Institute of Chartered Shipbrokers, who is due to retire in December 2001.

# Our Man in.....

## ITIC Around the Globe

ITIC, like the shipping markets served by its Members, is truly international. The Club has Members in 93 countries. We, at our London office, have wide specialist knowledge of the problems that affect our Members wherever they may be based. This concentration of experience is unrivalled. A shipbroker in Singapore can receive advice from ITIC executives who have handled similar problems for brokers in Oslo, London and Hong Kong. Ship managers based in Cyprus, Germany and Hong Kong can equally profit from the Club's vast experience of ship management contracts.

The Club's expertise is not, however, restricted to the London office. In this article we profile a member of the ITIC team who has moved from the London office to assist Members in Dubai. ITIC also enjoys the benefit of long established relationships with experts worldwide, and we conclude this article with a portrait of Correduria General Maritima S.L., who have, for many years, assisted Members in Spain.

## Our Man in Dubai - Andrew Webster

Andrew spent 3 years in the London office having previously been with the UK P&I Club. His previous experience in the Middle East resulted in his appointment as area executive for that region to which he travelled frequently on ITIC business. In April 2000 he moved to Dubai to take over the TT Club regional office (TTMS (Gulf)) and combines his new role with that of ITIC Middle Eastern Representative. Although based in Dubai, Andrew travels extensively in the region and is often found speaking at conferences and seminars. He is, however, always contactable via the Dubai office to assist with claims or other enquiries that are not connected with the underwriting process.



## Our friends in Spain - Correduria General Maritima S.L.

Correduria General Maritima S.L. was founded by Mr Pedro Lachiondo in Bilbao in 1939 when this city and port was the main shipping centre in Spain. The origins of the business are much older as Correduria was the continuation of the English insurance brokers, shipowners and shipbrokers Harris & Dixon who had opened an office in Bilbao, Harris & Dixon Limitada, in 1898.

Mr Pedro Lachiondo had joined that firm in 1918 and some years later became the first non-British partner.



Imanol Basterretxea, Pedro Mendezona and Jon Lachiondo

The onset of World War I caused Harris & Dixon to close their office and Mr Pedro Lachiondo took the opportunity to continue the business and become one of the first insurance brokers in Spain specialising in marine business. In addition the company carried out other activities such as ship agency and ship broking.

Since then Correduria have been the exclusive Spanish representatives of the Britannia P&I Club, which for many years has insured around 90 percent of the Spanish controlled merchant fleet. This, together with the representation of ITIC, is now Correduria's main activity. Their head office is still in Bilbao but the company has a branch office in Madrid. These offices contain highly qualified and professional staff who are eager to provide the Members with the best possible service.

Correduria remains a family business (the third generation) now under the leadership of Mr Jon Lachiondo who took over from his father and two uncles a few years ago. He originally joined the firm in 1989 after training at Tindall, Riley & Co and Harris & Dixon in London. At that time Tindall Riley were the managers of the Britannia and CISBA Clubs and following the merger in 1992 of CISBA and TIM the connection with ITIC was retained.

ITIC has about 50 Members in Spain, which is a traditional maritime country with ship agents located in the many medium sized ports situated along the coast line. The largest ship agents usually have their head offices in Madrid, which is also the chosen location for many other shipping intermediaries such as ship brokers and surveyors.

The claims and enquiries from existing Members as well as the task of attracting new Members to the Club has, for many years, been undertaken by Mr Jon Lachiondo and Mr Pedro Mendezona. Three years ago they were joined by Mr Imanol Basterretxea. Correduria's long standing relationship with ITIC means that Members in Spain can draw upon the services of this well known and experienced local company at any time.



# Mediation

an increasingly common way to resolve disputes

**There has been a considerable rise in the number of shipping disputes referred to mediation in the last few years. Mediation is a form of assisted negotiation and involves the appointment by the parties of a mutually acceptable person to attempt to assist them to reach a settlement. The role of a mediator is not to pass judgement on the parties. If the parties do not reach their own settlement then nothing is enforced upon them. The proceedings are private and confidential throughout.**

In London the growth in this form of dispute resolution has been the result of the Woolf Reforms. These reforms have fundamentally changed English court procedures and have aimed to reduce the costs and delays involved in traditional litigation. The trend towards the use of mediation is not, however, just a London based phenomenon. In the last year the Club has also been involved in mediations in the USA and Australia.

The mediations involving ITIC's Members have included both claims against the Member, typically Members alleged to have been negligent, and cases where the Member is bringing the claim. Last year a large commission dispute between a shipbroker and a shipyard was resolved by mediation. The process was quicker and cheaper than litigation. Just as important was the reduction in ill feeling that is inevitably caused by a court hearing. Professional relationships are much more likely to survive a settlement reached through mediation than a solution ordered by a judge.

Mediation is usually an option considered after proceedings have been issued. The majority of mediations are, if not court ordered, at least positively encouraged by judges. It is increasingly likely that Members with claims will become involved in mediation.

Mediation is an informal process and accordingly the exact procedures may vary but the following is a general guide to how mediation, especially in London, is conducted:

Although it is informal, mediation does take a considerable amount of preparation. If the mediation is successful then the costs will be much less than had the proceedings gone to trial. The procedure is also much quicker than formal court proceedings.

The mediation process will start with the parties and their chosen mediator entering into a written mediation agreement. This confirms that the proceedings are confidential and that anything

exchanged cannot be used in later proceedings if the mediation does not result in a settlement. The mediator's fees will be agreed. These are shared equally between the parties.

There are no formal pleadings but before the mediation itself each side will prepare a case summary to be given to the mediator and the opponents. These are exchanged at an agreed time prior to the mediation. Usually a couple of days is considered sufficient. The summary sets out the basis of the parties' claim or defence. The parties will normally agree what documents are at the centre of the dispute. These will be sent to the mediator in advance.

On the day of the mediation the mediator will normally choose to meet the parties together. This will give the mediator the opportunity to outline his or her role and stress that the mediator is not acting as a judge or arbitrator. There are two other important points. The mediator may privately offer opinions to a party but this is simply to help them to consider whether the point in issue really is a strong one; it is not a question of taking sides. In addition the mediator will only pass information to the other party if authorised to do so. The parties can discuss their case and possible weaknesses with the mediator in complete confidence.




The parties normally commence the mediation by making an opening statement. This is informal and it is often useful to ask one of the Members' own senior staff to make the statement as opposed to having it delivered by a lawyer. The involvement of senior staff is important. One of the main features of mediation is the need for the

parties to have someone present with the necessary authority to settle the matter. This does not mean that they have to have unlimited authority, but simply that someone must have seniority sufficient to negotiate and agree a settlement.

In most mediations the parties will then separate and the mediator will discuss the case independently with each side in turn and move between them. The parties are located in separate rooms but, where appropriate, the mediator will often bring them together to discuss various issues.

Neither party is obliged to settle at mediation and can withdraw from the process at any time. Many lawyers report that one of the real benefits of mediation is, although settlement is not agreed at the mediation itself, the fact that the parties have addressed the issues involved in the dispute means that settlement becomes much more likely in the days and weeks following a mediation.

It will not be possible to settle every dispute by mediation, but the growth in this form of dispute resolution will enable many Members to resolve disputes in a cheaper and less confrontational manner.



At ITIC's Forum 2000 the talk was of how "dotcoms" would be replacing the marine intermediary. Almost twelve months later the situation has changed considerably.

# high e-xpectations

Just a few years ago conducting shipping transactions online was a little known phenomenon. Today no maritime publication, conference, exhibition or seminar is complete without a look at shipping's e-business sector. We take a brief look at who's who among the plethora of maritime websites today and what threats they pose to the marine intermediary.

This time last year, chartering and procurement websites were enjoying countless column inches in the maritime press as a new start-up announced its arrival seemingly every week. But the last 12 months have seen a dramatic reduction in the number of players in shipping's e-business sector. Among the highest profile departures were ShipDesk and MaritimeDirect, both of which shut up shop earlier this year. Meanwhile, commercially enforced mergers and consolidations began in earnest with LevelSeas joining forces with SeaLogistics on the chartering front and OneSea teaming up with PrimeSupplier to form SeaSupplier in the procurement market.

Despite shedding some dead wood, the maritime industry remains overburdened with e-commerce websites. Today there are approximately 32 chartering sites, 28 liner sites, 13 procurement sites and countless others offering market intelligence and information. LevelSeas, founded in April 2000, has established itself as one of the leading names in chartering. Backed by over 30

investors including shipowners, shipbrokers and oil companies, it finally launched its online ocean freight trading system, LevelSeas Exchange (LSX), in July this year. Among the other players vying for a share of the chartering pie are ShipIQ, AxsMarine and Chinsay.

But they are not alone as August 2001 marked the official launch of both TankerIMX and Balticexchange.com. The new exchanges, aimed at brokers, owners, charterers and their agents, enables users to search for and match available vessels and cargoes, access relevant shipping information, and trade freight derivatives online. "Our fundamental objective is to ensure that Balticexchange.com is broker friendly, especially for the smaller broker" stated Peter Kitching, Chairman of the Baltic Exchange.

According to Forrester Research, a substantial percentage of all shipping transactions will be conducted online by 2005. It probably won't happen but if it does where would this leave the shipbroker? "Both the physical and virtual worlds of shipping will go through many transformations and adaptations as changes in perception, developments in technology, and internet acceptability grow. But the fundamental cornerstones that form the foundations of the shipbroking business, experience, in-depth market knowledge and fully bespoke client service, are not going to disappear," said John M Kulukundis of Charles R Weber Company Inc at ITIC's Forum 2000 last year. And he appears to be right.

Despite fears among brokers that the new chartering sites would prompt the disintermediation of the broker, this does not appear to have been the case. TankerIMX has been created with the participation of three leading tanker brokers - Dietze & Associates, McQuilling Brokerage & Charles R Weber Co Inc. In fact, the majority of the new sites claim to want to enhance the role of the broker by making him even more valuable to his clients. After all, with all the market information on offer through the sites today, principals need their broker more than ever to interpret and analyse the information and advise them accordingly. As David Cherritt of Clarksons points out, the modern broker performs a wide variety of functions for his clients including acting as a consultant, an agent, a contract manager and, if necessary, a resolver of disputes. The reality is that very few of these functions can be replicated online.

What happened in the procurement market? Following the closure of MaritimeDirect, OneSea seemed to have cornered the procurement market. But even this was short-lived when in May this year OneSea merged with PrimeSupplier. Just weeks later, the newly merged company announced the launch of SeaSupplier, an e-procurement site designed to automate and streamline the buying and selling of maritime supplies and services. Among its biggest rivals today are Setfair, launched in March 2000, and London-based ShipServ.

Bunker broker Members will know how the market has contracted. OceanConnect and BunkerWorld are the only two main players left

from the seven or eight who first started out. Most companies in the industry accept that on-line trading in bunkers will grow but few believe volume and revenue growth will be as quick as is needed. This was re-confirmed with the collapse of Smartbunkers in early August 2001. The question, as with the chartering and procurement sites, remains whether they are actually able to add value to the end user.

New market information and intelligence sites are constantly appearing. Shipping Intelligence Network (SIN) from Clarksons is probably the highest profiled site in this area offering ship databases and sale and purchase information along with analyses of market trends. Offerings from ship brokers, Poten & Partners Inc and traditional shipping journals such as Tradewinds, Lloyds List & Fairplay round up the on-line shipping news delivery sector.

So what of the future? It would appear that the long-term survival of shipping's e-business websites depends upon who's behind them. Those sites backed by established names, such as Balticexchange, Shipperserv, Setfair, SIN, TankerIMX and LevelSeas look set to be the market leaders. Those that have merged their businesses to capture a greater share of the client base, such as SeaSupplier, also seem to be strong contenders. But it remains anyone's guess as to which ones will still be here this time next year.

# developments @ [www.itic-insure.com](http://www.itic-insure.com)

ITIC launched its website at [www.itic-insure.com](http://www.itic-insure.com) in June 1999. We are pleased that the site has been of use to many Members and potential Members seeking information and have continued to develop it. The site now gives Members easy 24-hour access to the considerable loss prevention advice drawn from the Club publications, the Claims Review and The Intermediary, and provides information on the Club, its cover, and the staff of ITIM.

The site has recently been re-designed to improve access to the growing content. Among the changes to the home page at [www.itic-insure.com](http://www.itic-insure.com) is a "News and Discussions" section, where ITIC press releases can be read. It is also planned for the "News and Discussions" section to contain the Club's discussions board, which will provide Members with an on-line forum to exchange information and views.

The main site at [www.itic-insure.com](http://www.itic-insure.com) is now complemented by two "microsites" which can be accessed from [www.itic-insure.com](http://www.itic-insure.com) through the "ITIC Members' Area", and "ITIC Conference Website" buttons.

The Conference website provides access to the speaker notes from the Forum 2000 Conference. These papers, as can be seen from the conference review appearing in this issue of "The Intermediary", provide a unique resource of valuable advice and information on a wide range of industry topics. The site will also contain information on future conferences.

The "ITIC Members' Area" now contains a publications section, with articles from previous editions of "The Intermediary" and Claims Review, as well as on-line access to the Club Rules. We have removed the password for this area to ensure that all ITIC Members' employees have access, and would strongly recommend that members of staff be encouraged to read these publications, which provide important practical advice on avoiding claims.

The "ITIC Members' Area" will also contain an area specifically designed for those Members who have Rule 10, legal expenses and debt collection cover. There will be links within the facility to articles on debt collection. Members who have Rule 10 insurance will also be able to notify us of a debt on-line. Members will be able to email electronic documents which support their claim directly to their account executive via the website.

ITIC does not provide a credit reference service but as a Club we have extensive records of companies and ships that have been involved in claims from Members for outstanding disbursements or commissions. We have always advised Members that before dealing with a new principal it is worth checking with the Club to see if we have information that may be relevant. The planned development to the website will make this easier. A password protected facility will enable Members to check, under a ship or company name, whether the Club has any record of matters involving that ship or corporation. The fact that ITIC has a record is not, in itself, to be treated as raising concerns, whether financial or otherwise. A "positive" search result will however indicate that the Member may find a discussion with their ITIC Account Executive of interest.

All Members who have Rule 10 insurance will be provided with details of their user name and password shortly. In the meantime, we would invite you to visit the Club's site.



## loss of commission insurance

The Club offers cover to ship brokers and ship managers against loss of their commission or management fee as a result of a marine peril.

Most companies, whether marine or non-marine, have some form of business interruption insurance and in many ways loss of commission is a similar type of insurance. If a broker has negotiated a period charterparty the amount of commission lost arising out of the total loss of a ship in the early days of such a charter can be very substantial. Unless you have purchased loss of commission insurance, that is money wasted. ITIC offers insurance in one of two forms:

- a Loss of commission solely as a result of total or constructive total loss of a ship and;
- b Loss of commission due to any marine peril (including total loss), engine breakdown, strike, or war risk affecting ship or cargo.

Loss of commission insurance is hardly new. It has been offered by the hull insurance market for a long time. However, the wording was often difficult to understand and interpret. ITIC can insure both a one-off S&P deal or all

commissions earned by that broker in a year. You can therefore pay a premium from US\$100 upwards depending on what costs you want covered.

The advantages of this cover compared to similar products are as follows:

- Individual fixtures need not be declared.
- Comprehensive and flexible cover.
- Competitive premium.
- Uncomplicated policy wordings.

We have had a number of substantial loss of commission claims recently. One was as the result of an earthquake while another arose from the constructive total loss of a ship waiting outside a port and the third concerned a fire on a container ship that meant that one year's commission out of a five year time charter was lost whilst the ship was being repaired. All claims were paid in full.

If you would like more information please contact the Managers.

# Release of Cargo and NVOC's Bills of Lading - Liner Agents Beware!

It was always a fundamental assumption that only one set of bills of lading for each cargo should be in circulation. However, this pre-dates the advent of Non-Vessel Owning Carriers (NVOC's). Ship agents in the liner trades often have to deal with cargo for which there are two sets of bills of lading. The ocean carrier will issue one set of bills of lading which sets out his obligations. The merchant will not, however, see the carrier's bill as he will receive a bill of lading showing the NVOC as carrier and to the merchant this will be the only bill of lading.

The services provided by NVOCs are an established and important part of international trade. There are no problems automatically raised by the issuance of both ship's and NVOC's bills of lading so long as those involved remember the different functions of each document. Liner agents will frequently act as both agents for the ocean carrier and as agents for the NVOC. This dual role can lead to confusion if staff are not given proper training and guidance.

It is not unusual for the agent at the discharge port to be presented with a NVOC bill of lading by a consignee who is demanding delivery of his goods. The consignee will have paid for his goods through the banking channel and has in his hand a bill of lading which he believes entitles him to delivery of the goods. The agent who acts for the ocean carrier must, however, always receive the original ocean bill of lading (or the necessary authority from his principal to release without it), before he can release the goods. The consignee may have an NVOC bill of lading which is stamped "freight prepaid", but this only means that freight has been paid to the NVOC. The ocean bill of lading may still be in the hands of the ocean carrier's agent at the loadport waiting for the NVOC to pay the freight. If the ocean carrier's agent releases against the NVOC bill of lading, he will find himself liable to the ocean carrier for the freight unpaid by the NVOC.

In a case handled by the Club, a British NVOC made regular bookings with a line from Antwerp to Durban. The NVOC would collect freight from the shipper and in exchange would hand over an NVOC bill of lading stamped "freight prepaid". The NVOC then asked the line's Antwerp agent to arrange release of the cargo at Durban against the NVOC bill of lading. The system of the line's Antwerp agent authorising the Durban agent to release against the NVOC bills of lading went on for months. All the original line's bills of lading were still with the Antwerp agent waiting for the NVOC to pay the freight, which finally totalled tens of

thousands of dollars. The NVOC never paid and the ocean carrier claimed the outstanding freight from his agents at Antwerp and Durban, who set up this system without consulting the ocean carrier and with no consideration of the ocean carrier's rights.

The NVOC is not always the source of the problem and is often the victim of mistakes by the ocean carrier's agents. The Club has recently had a number of claims reported to it which involve NVOC bills of lading, and incorrect or incomplete information being entered onto the agent's computer system. The following are just two examples of common errors.

In one recent case, a UK liner agent received the original ocean carrier's bill of lading, duly endorsed, from a U.S. based NVOC, with an instruction to deliver a container of electrical goods against production of the NVOC's bill of lading. An employee of the agent made an entry on the computer simply recording the fact that the original ocean bill of lading had been lodged. Another employee, relying on this entry, released the cargo without requiring production of the NVOC's bill of lading. In this case it was the NVOC who had not been paid freight.

Another recent case involved a North American agent who failed to note on his computer system an instruction from an NVOC to hold a cargo. The cargo was released and the agent received a claim from the NVOC for losses caused by his failure to comply with this instruction. The claim included not only the freight, which the NVOC had not received, but also an indemnity against the unpaid shipper's claim for the full value of the cargo.

Ship agents rely on information entered onto computers when releasing cargo. Great care must be taken both in training staff to use the computer, and ensuring that they understand the consequences of entering incorrect or incomplete information on the computer system.

# wrongful arrest

The Club is often asked about the threat of a counter-action against the Member for wrongful arrest. In most countries, including the United States and England, a ship can be arrested with little possibility of incurring liability for wrongful arrest (even if the action ultimately fails), unless the arrest was malicious. This in effect means that the arrest was made without the claimant having a reasonable belief that his claim was being properly brought.

Before the Club arranges for action to be taken, the Managers will ask the Member concerned to confirm that the debt is truly outstanding and that they know of no counter-claim or other reason why it should not be paid. The arrest, when obtained, is of course in the name of the Member and not the Club.

## Fake Crew

**Against the background of shortage of suitably qualified crew, it is increasingly difficult for ship and crew managers to locate crew who have the necessary certificates to both confirm their competency, and to satisfy flag state requirements.**

The recent publicity involving fraudulent certificates allegedly issued by the Panamanian ship registry must cause alarm bells to ring for ship and crew managers. The most spectacular example was the purchase of a First Officer's Certificate by an official of the International Transport Workers Federation. The dangers to ship and crew managers if they appoint unqualified crew are obvious, and include the potential prejudice to the shipowner's right to recover under his insurances.

Fraudulent certificates are not just out and out forgeries, but may be fraudulent because they have been stolen or altered. Ship and crew managers need to review their verification procedures and ensure that they are as effective as possible.

## Certificates



# DEBT

## debt collection money well spent

**ITIC has recovered US\$50 million on behalf of its Members who have debt collection insurance. ITIC offers its Members, under Rule 10, an optional cover to assist with the recovery of outstanding debts, commissions, brokerages and disbursements. This cover pays for any legal costs incurred in the recovery of the debt, rather than the debt itself.**

The Club will also provide you with information on owners or charterers who have not paid their debts to other Members - invaluable to a ship agent when deciding whether or not to accept an agency appointment, and on what terms. As reported elsewhere in this issue, we are also hoping to be able to provide this information to you electronically, through the Club's website.

Tact is vital in order to preserve commercial relationships and a polite reminder about payment can be all that is necessary. If this fails, upon your instruction, ITIC's team of specialists in ship and asset arrest will use whatever legal means are necessary to try to recover the monies owed. You will find

various articles in this issue concerning ship arrest which will give you some insight to the action which may be required.

The sum in dispute must exceed US\$3,500 for the cover to respond, although limited assistance can be provided for sums below this amount.

How much does it cost? This depends on many factors, such as the size of your company and activities. However the money recovered from one outstanding disbursement or commission is often more than the additional premium you pay for Rule 10 and the insurance can therefore be said to pay for itself.

# The Marshal sometimes gets it wrong

A ship agent Member of ITIC was recently appointed by the local Admiralty Marshal to act for a ship under arrest. Once the agent obtained the disbursement vouchers he tendered his account for reimbursement, but was told by the Marshal that he was too late. The ship had been sold and all the sale proceeds had been distributed. What the Marshal had failed to take account of was that his agent had priority over other creditors and should have been paid first. Furthermore, the agent was still entitled to be paid by the Marshal, whether he had funds or not. ITIC, with the assistance of a local lawyer, managed to persuade the Marshal to pay his agent. The Marshal then no doubt made a claim on his professional liability insurer (not ITIC!).

## Illegal Immigrants Posing as Crew

The last two editions of The Intermediary have contained articles on the subject, and Members should be aware that the problem continues. The past year has seen ITIC ship agent Members in Spain, Portugal, Brazil, Ireland, New Zealand and Canada approached by fraudsters asking them to make arrangements for bogus crew members. Unfortunately two ITIC Members have become involved in trouble and expense as a result. ITIC and BIMCO (who have reported numerous other incidents) are co-operating to keep track of fraudsters. Members are asked to remain vigilant, to bear in mind that this is an ongoing problem, and in case of doubt to contact the Club.

## use of **email**

The proliferation of communication by e-mail has made our lives both easier and more difficult. It is now easier and cheaper than ever to communicate with business partners in all parts of the world, but the "immediate" nature of e-mail correspondence also makes it easier to make mistakes. Members who are careful to draw attention to the existence of their standard trading conditions by means of footnotes on their headed paper, faxes and invoices, do not always take the same care when sending e-mails. As more and more contracts (such as cargo bookings) are now made by e-mail, the Club is often faced with situations where it is difficult to prove that the Member's standard trading conditions have been incorporated at the

time the contract was made. E-mails also frequently get sent to the wrong recipient, and should therefore contain a "confidentiality" notice, making it clear that the message is only intended for the named recipient and that the receiver is prohibited from using the information contained in it.

The Club has seen several claims which have resulted from important communications being sent to unmonitored personal e-mail boxes. An instruction not to release cargo was sent to the personal e-mail box of a ship agency employee who was away from the office because of sudden illness. The cargo was released and the ship agent is facing a claim. Could this happen to you?

We are sure that large amounts of time are wasted each day trying to figure out who e-mails are from and who the intended recipients are, and it would greatly assist if the identity of the sender and recipient of an e-mail message was always clear.

We suggest that you make sure that both absent employees' mailboxes are monitored and that urgent messages are sent by fax as well as by e-mail. Business e-mails should clearly show the identity of the recipient and contain the necessary company information, details of trading terms and a confidentiality notice.



Russi Cooper, Julia Mavropoulos and Captain Suresh Amirapu

## Intermediary News

Julia Mavropoulos, ITIC's claims director, was invited by the Madras Chamber of Commerce and Industry, to give a talk entitled "Fraud as it affects the Transport Intermediary" on 13th November 2000. The event was attended by 50 members of the shipping sector of the MCCI and was sponsored by the Chennai Steamer Agents' Association, The Chennai Customs House Agents' Association and The Institute of Chartered Shipbrokers [Madras Branch].

## ITIC Sponsor the Macau Grand Prix

November's Macau Grand Prix saw ITIC enter the high speed world of motor sport as co-sponsors of leading British touring car team, GR Motorsport.

Two ITIC liveried Ford Focus racing cars were driven by Simon Harrison and Richard Meins, both former UK champions. With a strong entry of nearly forty drivers from around the world, a stunning performance saw Simon Harrison come home third.



## The Millennium Shipping Golf Tournament

In September 2000 ITIC fielded a team of Antonio and Mario Taragoni of Nolarma Tankers, Enrico Keiland of Hugo Trumpy and Roger Lewis of ITIM at the "The Millennium Shipping Golf Tournament" at Golf Club Villa Carolina near Genoa in Italy.

More than 150 golfers from all over the world took part in a special Year 2000 version of what is rapidly becoming the most popular golfing event on the Shipping Industry sporting calendar. If you can get an invitation, take it, because the venue, a beautiful country house in the hills above Genoa, will live long in the memory. Roger Lewis of ITIM is pictured (above) presenting ITIC's Prize to Vittorio Salmoni, winner of the Professionals Category i.e. Transport Industry Professional not Golfing Professional! ITIC would like to thank the organisers Massimo Canepa, Francesco Siccardi and Trevor Minter for hosting another successful event.



## Quality Assurance - ISO 9001 : 2000

Since its establishment in 1992 ITIC has been recognising the value of Quality Assurance by awarding a "one-off" premium reduction of 10% to all Members who achieve an appropriate ISO standard.



2001 has seen us, as part of Thomas Miller & Co., putting in the hard work required by Lloyd's Register Quality Assurance to achieve the ISO 9001 : 2000 standard. A wide range of our work practices have been captured and entered in the relevant manual. In some cases the exercise has highlighted the variations that have grown up over the years and where appropriate the best version has been adopted.

ISO 9001 : 2000 which was introduced at the end of last year, is designed to ensure that companies focus their management systems on meeting the needs and service requirements of customers.

Following a comprehensive, and successful audit of our business by LRQA in June the certificate was presented by David Moorhouse, Lloyd's Register Chairman to Tony Payne, Managing Director of ITIM, on August 23rd.



# FORUM 2000

## Innovative Thinking Is Crucial

At the beginning of October 2000, the Club invited its Members to a two day interactive forum at the Four Seasons Hotel in London. Over 200 delegates attended to discuss topics ranging from dot.coms to debt recovery.

The first day was general, with a wide range of subjects of interest for all. The second day was divided into four separate forums, specifically tailored for ship agents, shipbrokers, ship managers and transport professionals (including marine surveyors and P&I club correspondents).

On the social side, on the first evening there was a cocktail party at the Roof Gardens in Kensington and Forum 2000 concluded with a Celebration Dinner at the Four Seasons Hotel.

The text of all the speeches can be found at [www.itic-conference.com](http://www.itic-conference.com), along with further photos.



The Jubilee Dinner



Ian Biles, Karl Lumbers and David Patrino



Michael Chales and Peter Schaumburg-Müller



HSBC Insurance Brokers and others at the Roof Gardens



Grete Noer and Chris Papavasiliou

Janet McFee enjoying her prize at the Jubilee Dinner

[www.itic-insure.com](http://www.itic-insure.com)



For on-line access to:

- ITIC credit management centre
- loss prevention advice
- how to contact us
- proposal forms

