



THE WIRE

2017

Marine Surveyors and ITIC

ITIC provides professional indemnity (PI) insurance to marine professionals for claims which are brought against them due to losses suffered by their customers or other third parties as a result of their negligence, error or omission. ITIC, as a specialist, not-for-profit provider of professional indemnity insurance, is a natural choice for those requiring protection from claims who work in the marine sector.

This edition of The Wire is for marine surveyors and consultants. The focus will be how marine surveyors and consultants can manage risk, in order to avoid claims and protect the assets of their company through good practice, as well as sharing some recent claims examples.





Alberto Comitardi – Senior marine surveying underwriter

Alberto joined ITIC in December 2010. He is a qualified Italian lawyer that had previously trained as a shipping agent at a UK based shipping line and as supercargo in the UK, Bremen, Rotterdam and Antwerp. He handles claims worldwide and he is responsible for underwriting risks in Italy, Slovenia and Croatia.



ITIC's experience is that claims presented against marine surveyors and consultants are surprisingly varied, as you will see from the following...

More than you were asked to do

A marine surveyor in Germany was engaged by charterers to attend the loading of a cargo and report on any damage caused by the stevedores. The subsequent emailed instructions contained (in translation) the following provisions:

“We hereby order the following:

- Supervision of the loading/preloading survey
- Reporting of eventual damages to the coating or the material - and time of damage
- Reporting of negligence while handling of the material and loading
- Detailed documentation with photos of the loading operations
- This time no continuous supervision will be necessary, only during the important movements (commencement of loading operations - change of shift - securing of the cargo).”

The loading and lashing was completed and the ship sailed. Three days later there was a large noise from the cargo hold and the ship developed a 30 degree list. The master reduced the list by ballasting and diverted to a port of refuge. The cargo was discharged, sorted on the quay, reloaded, lashed and secured. About 600MT of damaged cargo was left behind. Over 10 days later the ship sailed to continue the voyage.

The owner alleged that the cargo had shifted due to poor stowage and ultimately obtained an arbitration award against the charterer for €1.56 million. The charterer subsequently held the surveyor and the stevedores (who loaded the cargo) jointly liable for €1.56 million.

ITIC arranged for lawyers to represent the surveyor. The claim was rejected on the basis that (1) the stevedores were responsible for the loading and stowage and (2) the surveyor's instructions were limited to reporting on stevedoring damage caused during loading. The potential difficulty with this defence was that the charterer's email instructions could potentially be interpreted as giving a wider obligation. In the circumstances a contribution to the settlement of the claim of US\$ 156,100 (about 10%) was agreed.

Although the contribution made was, in percentage terms, relatively modest the claim is an example of how the wording of instructions can potentially widen the scope of a surveyor's liabilities. If the brief is understood to be restricted to a specific task it is important to make sure this is clearly recorded.

Underwriters fall out with expert witness over valuation of fire-damaged vessel

ITIC has reported a case in which hull and machinery insurance underwriters commenced proceedings against a marine consultancy firm for alleged negligence in failing to properly review shipyard quotes in respect of the cost of repairing a fire-damaged vessel.

The insured vessel had suffered extensive fire damage. The owner claimed that the ship was a Constructive Total Loss (CTL) (the cost of repairing it would be in excess of its insured value). The insurers rejected this contention, maintaining that the vessel was capable of economic repair. The vessel was ultimately scrapped, and a dispute over the amount the insurers were obliged to pay under the policy arose.

At an early stage, the owner made an offer to settle the claim by stating that they would accept \$1.136m, plus their legal costs. Underwriters rejected the offer, and owners commenced litigation. The underwriters engaged a marine consultancy firm to provide expert advice/evidence on what it would have cost to repair the vessel. The consultants issued a report stating that the vessel was not a CTL. This report was based, in part, on two independent quotations from Chinese shipyards and detailed calculations from the builder of the vessel which indicated that the steel weight for the vessel's accommodation block was 312 tonnes which had been provided by their client.

The owner in turn submitted the report of their technical expert, which had been prepared using a different, 'newbuild' approach. This report used an estimated steel weight total of 542 tonnes to repair the accommodation block, and concluded that the total cost of repairing the vessel was \$6m, a figure that would have made the vessel a CTL. Following a joint experts' meeting, underwriters' counsel asked

their consultant to prepare their own steel weight calculations, inclusive of the accommodation block, in order to rebut the owner's report. Drawing from their own calculations, the underwriter's consultants concluded that the shipbuilder's initial steel weight figure was inaccurate and that the cost of repairing the vessel was in fact \$3.9m in excess of the total insured value. On the basis of this new advice, underwriters settled with the owner for \$1.3m, plus the owner's costs.

Underwriters then commenced proceedings against their consultant on the basis that they had been negligent in failing to properly review the shipyard quotes. Underwriters claimed that had they been properly advised initially, they would have been able to settle for a lower amount at an earlier stage. This would have also reduced their own costs and their liability for the owner's costs.

The consultants pointed out that the underwriters had rejected the owner's earlier offer before they had even been engaged and argued that, for their part, they had relied on the Chinese shipyard's calculations, which were provided by the underwriters. Moreover, it was not until after the joint experts' report that they were asked to make their own assessment.

Reporting that the issue was finally settled at mediation for GBP 305,000 and an agreement that both parties bear their own costs, ITIC says, "It is five years since the English Supreme Court held that expert witnesses involved in legal proceedings no longer enjoy protection from liability for negligence. It was a feature of this dispute that there was no document specifying what the consultants had been engaged to do. **A large number of disputes involving consultants and other advisers would be avoided if the scope of work was clearly defined beforehand.**"

Crossing the line

A marine surveyor was appointed by the owners of a ship that had been involved in a major casualty which had involved significant loss of life. There were potential criminal charges arising out of the incident.

The local police had taken possession of the vessel while investigations as to the cause were underway. The surveyor was invited to attend the vessel by the owner's fleet manager. On reaching the wreck no one stopped them from going on board. Subsequently a joint survey with all the parties involved, including the Public Prosecutor, was carried out. During the joint survey the member indicated to the Public Prosecutor various points of interest in the wreck. When queried about his knowledge of the places, the surveyor responded that he had previously been on board with the fleet manager. The surveyor had assumed that the fleet manager had been authorised to take him on board.

The Public Prosecutor considered charging both the fleet manager and the surveyor personally with tampering with evidence. The surveyor's employer had purchased ITIC's Directors' and Officers' cover. This additional insurance covers

legal costs arising from criminal charges that would fall outside the scope of a professional indemnity policy. A specialist criminal lawyer was appointed and the matter was resolved.

Directors' & Officers' insurance (D&O) is a personal insurance purchased by the employer for the benefit of its directors and officers. ITIC's D&O product protects both individual directors from claims against them in person and also the company that has to indemnify these senior staff.

Contact your ITIC Account Executive, or insurance broker, for more information.





Surveyors signing indemnities

Often ITIC's surveying members are asked by ship owners, with whom they have no contract, to sign an indemnity, disclaimer, waiver or release in favour of the ship owner, before they are granted access to the vessel. For example, when appointed by a prospective buyer to perform a pre-purchase survey or when appointed by cargo insurers to inspect cargo aboard a vessel.

ITIC has provided many surveyors with advice about how to tackle these requests. Having discussed the matter with the Admiralty Solicitors Group (ASG), who had their own surveyor indemnity wording, it was decided that their wording (the ASG 10) could be revised in an effort to be fairer to both parties.

ASG/ITIC 10 is an outline wording for such circumstances.

ASG/ITIC 10 provides for two alternative regimes, when the vessel is unsafe to board, and all other situations (A or B). The wording is designed to be effective even when it is unclear what the position is at the material time.

ASG ITIC 10/A presumes that the vessel is unsafe to board. The vessel can be unsafe to board for one or more of the following reasons:

- She is a casualty (whether as a consequence of a collision, stranding, explosion, fire or otherwise);
- Although not a casualty, she is in a state of distress, disrepair or duress such that safe access cannot be granted in the circumstances;
- Although not a casualty, her (whole or part) cargo is damaged or off-spec to the point that the cargo is or may become dangerous; or
- Although not a casualty, at the sole discretion of the master, she cannot be boarded safely in the circumstances.

ASG ITIC 10/B governs any other situation.

The **ASG/ITIC** wording can be found on ITIC's website, here: [Home > Knowledge Zone > ITIC and ASG launch new surveyors' indemnity wording](#)

ITIC's Standard Terms & Conditions for surveyors & consultants

Almost all cargo transported throughout the world is carried according to some form of contractual conditions. Ship owners, freight forwarders and other carriers carry on their business knowing they are protected by their trading conditions. It is perhaps surprising therefore that surveyors and consultants, who deal with the same ships and cargoes, seldom take steps to obtain the same protection.

Following consultation with a number of industry bodies, we have produced "ITIC's Standard Terms for Surveyors and Consultants," a set of draft clauses for members to consider using in their own trading conditions.

These terms and conditions are published for the general interest of members of ITIC. The specific requirements of individual businesses vary and accordingly no responsibility can be taken for the suitability of these terms and conditions to a specific business or contract. As with all contractual terms it is important that the user ensures that they are properly incorporated in their contract with their counterparty. Members should seek the advice of their usual legal advisor prior to using such terms and conditions.

The Standard Terms & Conditions for surveyors & consultants can be found on ITIC's website here: [Home > Knowledge Zone > ITIC's Standard Terms & Conditions for surveyors & consultants](#)

Guidelines for incorporating Standard Terms and Conditions

Having an excellent set of Standard Terms and Conditions (Terms) in your desk drawer or on your website is all very well, but unless you have incorporated them into your contract with your client they will not form part of your legal relationship. This means you will not be able to rely on them should a dispute arise. It is therefore very important that you incorporate your Terms into your contracts. ITIC provides detailed information on how to incorporate your Terms on its website here: [Home > Resources > Publications > The Wire > Guidelines on incorporating Standard Trading Conditions \(STC's\)](#)

See more online at itic-insure.com

Call our team on +44 (0)20 7338 0150

 or follow us at: @ITICLondon

[Bermuda](#) | [Hong Kong](#) | [The Isle of Man](#) | [London](#) | [Newcastle](#) | [New Jersey](#) | [Piraeus](#) | [San Francisco](#) | [Shanghai](#) | [Singapore](#) | [Sydney](#)

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
© 2017 International Transport Intermediaries Club Ltd