

SHIP MANAGEMENT

INTERNATIONAL

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Evolution not revolution

Shipping - ready for
a new dawn

Survey yourself out of distress

Robert Hodge, a senior account executive with International Transport Intermediaries Club (ITIC), explains why, in a difficult market, it is important for ship managers to carry out pre-management vessel surveys

Due to the difficult (albeit improving) state of the dry bulk market, there has been a noticeable increase in the number of ships being taken on by ship managers from the banks as distressed tonnage.

Prior to agreeing to accept ships under management, it is important to carry out a pre-management survey. This requirement is even more important when distressed tonnage may not have been maintained as well as it should have been. ITIC has ended up paying substantial claims when a survey has not been carried out or undertaken, or when a report has not clearly set out what has and has not been inspected.

One ship manager accepted the management of a ship, but had not inspected it beforehand. In fact, due to a high staff turnover in its technical department, nobody from the management company had even visited the ship. The owner went onboard some 10 months after it had been under management and, appalled at the condition of the vessel, immediately made a claim against the manager for failing to manage and maintain the ship.

The vessel was relatively old and was probably not in the best of condition when the manager took it over. The manager, however, had no proof of this. The owner brought a claim of over \$900,000 against the manager. As ITIC had no starting point/initial survey on which to begin negotiations, the claim was settled for \$700,000.

Shipmanagement agreements will normally start on the date the manager takes on the ship. As a pre-management survey will naturally have to be carried out prior to the vessel joining the manager, it is important to ensure that the survey is carried out under a separate survey agreement or that the work is undertaken under the manager's own separate standard terms and conditions.

Having excellent terms in a desk drawer or on a website is all very well, but unless they are incorporated into the manager's dealings with its principal, they will not form part of the legal relationship between the two and cannot be relied on in the event of a dispute.

Here are a few general tips on how ship managers can incorporate their terms:

1. The terms must be brought to the attention of the other party (counter-party) before or at the time the contract is made. Usually, it is sufficient to bring them to the other party's attention and make copies available to them. If the other party chooses not to read them, that is their concern. If the terms are brought to the counter-party's attention once the contract exists, it will be too late to incorporate them.
2. The safest way to incorporate terms is to send a copy to the counter-party to sign or, alternatively, to acknowledge receipt of. If the terms are signed or acknowledged, your counter-party will not be able to say it had not seen them if a dispute arises.
3. In many cases, a signed version – or even an acknowledgement – may not be received. However, if it can be shown that a copy was provided or made available, that should be sufficient. The fact that the terms are not signed or acknowledged does not preclude them from being part of the agreement.
4. Ship managers should make a copy of their terms available on their website. A footnote should also be included on emails stating: "All work undertaken is done so strictly in accordance with our Terms and Conditions, a copy of which is available. Copies are also available on request". A similar footnote should also be included on faxes (if you can still remember where the machine is), letters and any other form of communication used.
5. If the terms are brought to the counter-party's attention once the contract exists, it will be too late to incorporate them.

ITIC's Standard Terms for Surveyors and Consultants incorporates a set of draft clauses for members to consider using in their own trading conditions. These can be found at www.itic-insure.com. ●