



Why do liner agents need to join ITIC?

Liner agents - the claims experience

Liner agents' errors or omissions claims account for claims in excess of US\$ 13 million presented to ITIC over the past five years. The best way to explain the insurance provided by ITIC is to provide examples of claims. All of these claims result in expense for the shipping line, much of which is not covered by the line's P&I or hull insurances. Most claims against ship agents relate to negligence, examples of which are:

- **providing wrong port information;**
- **documentary errors - which can result in:**
 - **inability to collect freight**
 - **errors in quoting freight rates**
 - **customs fines and confiscation of cargo**
 - **misdirection/cross delivery of cargo**
 - **reefer cargoes at wrong temperature**
 - **erroneous fumigation**
- **mismanagement of equipment**
- **delivery of cargo without bills of lading**

Providing wrong port information

Before a ship arrives in port, it is necessary to make sure that all local regulations which the ship needs to comply with are met. These can relate to the carriage of dangerous cargo, advance presentation of manifests, stowage plans etc. The shipping line often relies on the local ship agency to advise them of these requirements. Sometimes the agent gets it wrong. In such cases the shipping line is faced with additional operational expense which can as much as hundreds of thousands of dollars.

One liner agent failed to advise the line about a local regulation requiring dangerous cargo of a certain IMO Class to transit local waters in small quantities. An expensive container re-stowing operation was required. Another liner agent failed to present cargo manifests to customs sufficiently in advance of the ship's arrival. Both instances resulted in additional costs and claims from the shipper for delay.

Documentary errors

One of a ship agent's tasks is to prepare all the documentation which relates to the cargo. A mistake in a bill of lading or manifest can result in substantial liabilities.

- **inability to collect freight or charges**

The incorrect issuance of a bill of lading, for example by failing to include a clause which calls for "free out" charges to be paid by the receivers, can result in the shipping line being unable to collect such charges. Bills of lading are occasionally stamped

"freight prepaid" by mistake. The agent in the discharge port releases the goods unknowingly only to discover afterwards that freight has not been paid. Unable to lien the cargo for his freight because of the clauising on the bill of lading, the shipping line had no alternative but to recover it from the agent who had issued the bill of lading. One such case resulted in freight being owed to the line of US\$400,000. The insurance covers inadvertent issuance of "freight prepaid" bills of lading, but not the deliberate extension of credit.

➤ **errors in quoting freight rates**

An agent has to be careful to quote the correct rate, otherwise he will find himself paying the shortfall. A liner agent in Antwerp booked 83 containers of vegetable oil to Blantyre, Malawi, but quoted the rate for Bloemfontein, South Africa, which was the next rate on the principal's tariff. The difference in freight amounted to US\$250,000. The shipper (not unnaturally) accepted the quote and the line had little choice but to claim the freight difference from the agent. A high price to pay for one's eyes straying down a page.

➤ **customs fines and cargo confiscation**

In most countries, in order for a carrier to be fined by customs, there has to be a substantial irregularity in the way cargo is declared, and possibly evidence that the carrier has made an intentional misdeclaration. However, there are countries where fines by customs for minor errors in bills of lading and manifests are a major earner of foreign exchange. Indeed, customs in some countries are presented with substantial targets which they have to collect each year in customs fines, and in others the customs officers are paid a percentage of any fines they manage to collect. This type of incentive creates a climate where the customs officer will seize on any minor documentary errors, and agents should therefore be extremely careful when preparing documentation.

When a Chilean ship agent issued a bill of lading for a consignment of denim cloth for Colombia, he inadvertently entered the freight amount in the place where the weight should have been. Even though it was obviously a genuine mistake, the Colombian customs seized the opportunity (and the cargo). The agent had to pay a fine of US\$35,000 to get the cargo released.

➤ **misdirection /cross delivery**

If an agent sends a container to the wrong destination the costs involved are usually those of repositioning the unit to where it was supposed to go. However there can also be other losses, such as customs penalties, cargo loss or damage or even confiscation by the authorities. Cargo bound for San Diego has been sent to Santiago, steel for Cochin went to Kaohsiung and it is amazing how many places in China have identical or similar names. It may only cost hundreds of dollars to send a container from Europe to New York by sea, but if you have fifteen containers erroneously stowed for New York instead of Long Beach, the costs of trucking across America will be thousands of dollars per container.

What happens when two different grades of the same commodity are loaded in the same yard on the same day? Time and time again, we see that where cargoes of two different grades are mixed and sent to the wrong destination, the fortunate consignee who gets a more valuable cargo claims to have sold it on without noticing, whereas the consignee who gets the inferior cargo refuses to accept it. We have seen this same phenomenon with butter from Denmark, wool from New Zealand, pickled sheepskins from Ethiopia, and fish from India.

➤ **reefer cargoes at wrong temperature**

Many cargoes are carried around the world in refrigerated containers or reefers. One of the more common mistakes of liner agents is that of failing to ensure that the container is plugged into the electricity supply either ashore or on the ship. Some refrigerated cargoes are extremely valuable - a container of photographic film or of seafood would be worth US\$150,000+. The receiver will claim against the shipping line who will have to settle the cargo claim. In order to avoid having such a large cargo claim on their P&I record, the line recovers in full from their agent.

➤ **erroneous fumigation of cargo**

If snails, insects or other kinds of wildlife are found in or on containers, the health authorities are likely to request the line, via its agent, to arrange for the cargo to be fumigated. What happens if the agent keys in the wrong container numbers into his computer? Ten containers of acetate tow - which is used for making cigarette filters - were rendered worthless by a liberal application of methyl bromide. Another cargo claim passed on to the agent.

➤ **cargo loaded on deck with underdeck Bills of Lading**

A liner agent in the US booked a Westland helicopter from a US port to Australia. The helicopter was loaded on deck, but the agent issued an underdeck B/L. The claim by the principal was that the agent failed to notify him that the underdeck B/L had been issued and he did not add the helicopter to his shipowners liability insurance (SOL). The claim was for US\$900,000 and was settled for US\$450,000.

➤ **mismanagement of equipment**

The shipping line relies on its agent to monitor and control its stock of owned and leased containers. A liner agent in Singapore failed, over a lengthy period, to offhire and redeliver containers which had come off his principal's ships. The principal calculated that he had paid US\$750,000 in storage charges and per diem hire charges due to the agent's mismanagement of his equipment. The claim was settled for US\$450,000.

Delivery of cargo without taking in exchange the bill of lading

Shipowners' P & I Clubs exclude any claims which result from the delivery of cargo without bills of lading, even if the delivery is made by the shipowner's agent without his knowledge or authority.

ITIC, unlike the shipowners P & I Clubs covers claims for release of cargo without bills of lading by ship agents, but only where the misdelivery is not deliberate (for example against a copy or forged bill of lading, or against an improperly worded letter of indemnity accepted with the principal's authority). A deliberate decision to release without original bills of lading to a good customer would not be insured. This having been said, the accidental release of cargo without taking in exchange the original bill of lading is one of the major claims against liner agents.

A German liner agent received four identical containers of television sets, each shipped by the same Hong Kong company and with the same Austrian consignee. All four containers were released on the same date and delivered to a Polish receiver. Six months later the shipper produced a full set of original bs/l for one container, and it was discovered that the agent had taken three original bs/l in exchange for 4 containers. The agent reimbursed the line with an amount of US\$175,000.

Another option, when the original bill of lading is not available, is to deliver against a letter of indemnity. The indemnity does not relieve the carrier of liability to the cargo

owner. It only provides for compensation of the amount that the carrier may have to pay to the holder of the original bill of lading. The principal relies on the agent to ensure that not only does he not release against an indemnity without the principal's authority, but also that wording and security are those approved by the principal.

The release of cargo against indemnities has produced many claims. In one case the agent had received a letter of indemnity, counter-signed by a major international bank, which was addressed to "the Master and Owner of m.v.....". However, the agent's principal was a shipping line, and the letter was useless in that it did not protect the interests of the agent's principal or the agent himself. Agents have accepted letters of indemnity where the bank's signature has been forged, and where the amount of cargo mentioned in the indemnity was far less than the cargo which was released.

Other assistance provided to liner agents

Agency agreements

The principal is likely to provide the wording of the agency agreement, and the commercial reality is that the agent often has to accept terms which are not entirely favourable to him. There are however terms which the agent can live with and there are other terms which change the balance of responsibility to such a degree that the liner agent should not, in our view, accept them. ITIC has vast experience of the adverse consequences to agents of onerous contracts and reviews hundreds of liner agency contracts each year. ITIC is happy to provide this service to its Members.

If the liner agent's principal decides to open its own office, ITIC can help in recovering compensation, and in dealing with any dispute under the optional Legal Expenses and Debt Collection cover.

Shipping line bankruptcies

Over the years shipping lines, well known and well established, have unfortunately ceased trading leaving debts. One recent example is Cho Yang Lines. When shipping lines become bankrupt, the agent can face numerous claims from vendors who have supplied goods and services to the bankrupt shipping line. These vendors will allege that they contracted directly with the agent. ITIC will deal with such claims and, in the event that the agent has inadvertently failed to make his agency status clear when ordering goods and services for the shipping line, will deal with the claim.

How should liner agents go about arranging insurance?

Agents should apply to ITIC for their insurance either directly or through their insurance broker. This is quite straightforward. A simple proposal form needs to be completed. ITIC will then give a quotation showing what risks would be insured and the price for the insurance.

Some shipping lines include a clause in their agency agreements a clause requiring their agents to purchase an insurance such as that provided by ITIC. The reason for this is simply that if the agent is not insured, the shipping line runs the risk of one of their agent's errors resulting in a loss which the agent cannot pay, and which the shipping line has no insurance for.