ITIC
SPECIALIST PROFESSIONAL INDEMNITY INSURANCE

Claims review 29

September 2013

Not a class act

The design of a small aluminium ship was undertaken by a naval architect, who was insured by ITIC. The owner advised that the ship was to be capable of achieving a specific commercial survey class.

In order to obtain registration from the relevant maritime authority, the owner was required to submit certificates attesting to the design and stability of the ship. The owner relied on the naval architect to provide these documents, which were subsequently approved by a surveyor.

The owner later discovered that the ship was not able to achieve the class required, and claimed that a number of design faults were to blame.

Proceedings were commenced against both the naval architect and the builder of the ship, in which the owner claimed around USD 100,000 plus interest and costs, which they said represented their losses suffered as a result of the negligent design and certification of the ship.

Lawyers were appointed by ITIC to defend the naval architect and the opinion of an independent expert was sought. The expert advised that whilst the naval architect may have been negligent, the builder and the surveyor bore a greater portion of the liability. Unfortunately, by this stage, the builder was no longer trading and had no funds or assets, and the surveyor had been declared bankrupt.

By the time a mediation took place, the claim, including costs, had increased to USD 160,000. Evidence also came to light that suggested the surveyor may have, in fact, been engaged by the naval architect, who was therefore responsible for any negligence attributable to the surveyor. Furthermore, the owner had obtained their own expert's report which was quite critical of the architect. At the mediation, a settlement was agreed at slightly less than 50% of the claim, for which ITIC reimbursed the naval architect, along with the legal costs which had been incurred.

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IS MANAGED
BY **THOMAS MILLER**

Contaminated cargo

A marine chemist carried out routine testing of a cargo of methanol when a vessel docked for discharge.

This routine procedure involved drawing samples from each of the tanks. From each of these samples composite samples were made up and tested for chlorides. The initial reading was 'off-spec' which was not unusual. The second composite tested as 'on-spec' and therefore discharging commenced.

After 10 hours of discharging, another sample was taken from the shore side tanks which showed that both tanks were 'off-spec'.

As a result, the marine chemist received a claim from the shipper for the amount of USD 850,000. The ship owners and manager were also named in the legal action.

ITIC instructed lawyers to defend the marine chemist and investigations found that the ship had cracks and leaks in the pipe work, which could have contributed to the contamination. This was confirmed by an independent surveyor.

An expert in marine chemistry was also appointed by ITIC's lawyers, to carry out a full report of the procedures undertaken by the original chemist.

Unfortunately, the experts found that the equipment used was not calibrated correctly which led to the improper sampling of the cargo. The chemist agreed with this conclusion, so lawyers were instructed to try to resolve the case on the best possible terms.

After protracted legal discussions the case settled for USD 300,000. Legal costs totalled USD 207,000, which ITIC also paid.

The dangers of forgetting

A ship fixed by a commercial manager had a clause in the charterparty which stated that the charterer would reimburse owners any extra costs in relation to the ship being ordered into a war risk area.

It was further agreed that the commercial manager would advise the charterer what the additional costs would be, prior to the ship entering the war risk area, so that the charterer could reclaim the cost from the cargo owner.

On three occasions the commercial manager forgot to advise the charterer of the additional cost and just debited them 3 months later. It was then too late to recover the costs from cargo owners and so the charterer refused to pay, based on the commercial manager's negligence.

Some negotiations took place to reach an amicable settlement of USD 60,000, which was paid by the commercial manager and reimbursed by ITIC.

Bags of trouble

A commercial ship manager fixed a ship for a voyage of 4,000 metric tonnes of ammonium nitrate in big bags. This type of cargo had been carried by the commercial manager's fleet on several occasions, but the cargo had always previously been described as being in loose/bulk condition.

After the ship had loaded about 950 metric tonnes, port state control came aboard and stopped any further loading, as it was established the ship did not have permission to load ammonium nitrate in big bags but only in loose condition.

After checking the position with owners, the classification society and the flag state, it was confirmed that the ship which had been fixed was not suitable to load the ammonium nitrate in big bags.

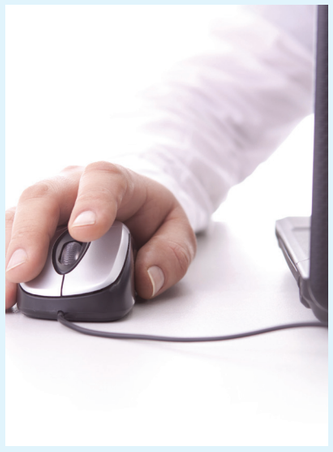
To keep any costs to a minimum, the commercial manager fixed a different ship in their managed fleet for the same cargo, with the agreement of the charterers. The charterers then held the owners responsible for the additional costs, who in turn, held the commercial manager liable. Fortunately, these costs only amounted to EUR 22,000, which was reimbursed to the commercial manager by ITIC. The cost of this claim could have been significantly higher, if a suitable substitute vessel had not been available.

Commercial managers need to be fully aware of all limitations which ships under their management have, as regards to carriage of particular cargoes and, furthermore, must pay careful attention to the detailed description of any cargo which they agree to commit their owners to in any charterparty fixture.

ITIC's Terms and Conditions for Shipbrokers

Historically shipbrokers have been one of the only marine professionals not to use standard terms and conditions when contracting. However this practice has been changing. Over the last couple of years individual broking companies, including some of the biggest, have begun to use their own terms and conditions. ITIC has encouraged this development and assisted with the drafting process.

In order to widen the use of terms and conditions and as a service to all its shipbroker members ITIC is publishing a sample wording - ITIC's Terms and Conditions for Shipbrokers - which members can adapt to the needs of their individual businesses.



ITIC's Terms and Conditions for Shipbrokers reflect a trend in all spheres of business towards recording relationships in writing. The terms and conditions set out the services provided by the broker and also cover the need to comply with sanctions, bribery, money laundering and other legislation. The broker's obligations to act with appropriate skill, speed and within the authority he is given are also included. Other clauses deal with obligations of confidentiality and post fixture communications.

ITIC's Terms and Conditions for Shipbrokers and a guide on how to use them in your business are available on our website at

www.itic-insure.com/rules-publications/standard-trading-conditions

Time waits for no claim

The loading of a ship was delayed, as a result of which the owners had a claim against the charterers under the terms of the charterparty for demurrage of around EUR 70,000.

The charterparty contained a standard clause exempting the charterers from liability in respect of demurrage claims unless claims were received within 60 days of the completion of discharge operations. Certain documentation supporting any such claim had to be provided by the owners within the same time frame.

Within the 60 day period, the owners sent the broker a claim for demurrage, which the broker received but failed to pass onto the charterers.

The owners followed up with the broker as to the status of their claim after the 60 day period had elapsed. The broker approached the charterers, who relied on the time bar provision to decline to settle or contribute towards the owner's demurrage claim. The owners then turned to the broker for settlement of their claim.

The broker reported the claim to ITIC. Whilst reviewing the relevant correspondence, ITIC discovered that, although the owners had passed the demurrage claim over to the broker within the 60 day period, the documented claim was in respect of the same ship but a different voyage. The owner's claim was therefore rejected.

The owners then engaged their FD&D insurers, and subsequently lawyers, to pursue their claim on the basis that the broker should, on receipt of the incorrect documentation, have alerted the owners of their error.

Negotiations took place and the claim was eventually settled on approximately a 50/50 basis, with ITIC reimbursing the broker for their contribution. ITIC also covered the legal costs.

Claims clause covers more than demurrage

After the conclusion of a voyage, various owner's claims were submitted by the shipbroker to the charterers within the time allowed (including the costs of shifting, cleaning and demurrage). However the owners separately sent the shipbroker a claim for loss of hire. This was for an amount of USD 31,500 but this was not sent to the charterers within the 90 days. The charterparty was subject to US law and the time bar clause was wide enough to cover all "charges and claims". The charterers refused the claim on the basis of the time bar.

The shipbroker paid the claim and was reimbursed by ITIC.

Shipbroker members have commented that it is common to receive claims for items such as loss of hire and war risks insurance separately from the demurrage claim. It is important that care is taken to ensure that ALL these claims are passed on in time.

Twenty Four hours is a long time in a falling market

A shipbroker fixed an extension of a charter in direct continuation. However, the broker working the account had forgotten to include the charterer's "subject to 24 hours reconfirmation" in the negotiation.

When a clean recap was received from owner's broker, charterers immediately replied that they had asked for 24 hours sub reconfirmation on the business.

The owners refused, as the subject was not part of the negotiations that they had seen and considered themselves fully fixed.

Charterers failed to perform the extension and redelivered the ship to the owners. The owners fixed the ship to a different charterer, but the period of the new charter was shorter and the rate was lower.

The owners brought a damages claim against charterers and the charterers in turn brought a claim against the shipbroker.

ITIC paid the amount of USD 140,000 in settlement.

A Friday afternoon failure

A ship was fixed for a trip timecharter for two voyages, with an option for a third. In accordance with the recap the option was to be declared by the charterers on completion of loading on the second voyage. The fixture had been negotiated via brokers in two different offices of the same broking company.

The third trip option was exercised by charterers on a Friday afternoon. The broker who received the message forwarded it to his colleague in the other office. Unfortunately, that broker did not immediately pass it on to the owners.

The ship completed the second voyage on the Sunday but it was not until Monday that the message declaring the option was passed on to the owners.

By Wednesday the owners stated, via the broking channel, that because they had not received the notice until the day after the loading had been completed the declaration was invalid and that they expected redelivery of the ship on completion of the second voyage.

The spot market at the time was extremely volatile but rising. Therefore the owners wanted the ship redelivered. The charterers clearly wanted to retain the ship to maximise the profit from the final voyage.

The market however changed again and after a week owners confirmed they would allow the third voyage. Both parties reserved their position. The business available to charterers was, by this stage, less profitable than at the time they had declared the option. They ultimately claimed the lost profits against both the owners and the brokers.

The brokers argued that the majority of the delay was caused by the unreasonable conduct of owners in refusing to agree to the third voyage. A settlement was ultimately agreed, with the broker's contribution reflecting their delay in passing on the message but not the subsequent fall in the market.

Time sensitive messages should always be followed up with a telephone conversation to ensure they have been received and acted on.

The risks involved with Bills of Lading - an ITIC e-learning seminar

As you will see from the examples given in the following paragraphs a mistake in a bill of lading can have wide ranging consequences and produce a variety of claims. The main source of ship agency claims seen by ITIC are those which involve bills of lading.

Several years ago, ITIC produced an online presentation, which has been recently updated and relaunched.

The aim of this seminar is to inform you of the areas of risk, so that you can prevent a loss occurring in your business. All ship agency members should encourage their staff to take part in the seminar which is available at

www.itic-insure.com

Bills of Lading blunder

In late September, an agent for a major shipping line accepted a booking of industrial solvent. On 10 October the vessel arrived at the loadport but did not complete cargo operations until five days later.

The shipper then requested an original bill of lading from the ship agent. However, when the original bill was produced by the ship agent, the system used to generate the bill of lading picked up the original scheduled departure date of 10 October. The "shipped on board" date was therefore inserted on the original bill of lading as 10 October instead of the actual date of 15 October.

The consignee paid for the cargo under a letter of credit but later claimed that, had the correct "shipped on board" date been inserted, he would have cancelled the order, as there had been a slump in the market for this product.

The loss to the consignee of USD 39,150 was duly paid by the line, who then sought to recover this amount from their agent. ITIC reimbursed the member.

This claim could have been avoided if the ship agent had simply checked that the details on the original bill of lading were correct.

Cargo discharge clanger

A ship agent received instructions from a shipper to book eight containers of cargo from Saudi Arabia to Indonesia and issued two bills of lading for the booking.

Two weeks later, the agent received revised instructions to change the consignee name for the whole consignment. In addition, the cargo was now required to be shipped to another port in Indonesia.

Two new bills of lading were issued, supposedly with the revised destination and consignee details. Unfortunately, however, the agent only updated the consignee details and not the destination, so the cargo was discharged at the port on the original booking. The agent tried to persuade the consignee to take delivery of the cargo at the original discharge port but they refused to do so, and demanded that the cargo be moved. The cargo was eventually transported by road to the revised final destination.

The additional costs incurred in delivering the cargo included additional customs documents being issued, the trucking costs and also the terminal storage charges. ITIC reimbursed the ship agent for all of these additional costs, totalling USD 18,626.

A careless simple omission by the ship agent caused unnecessary delay and costs to all parties concerned.

Forged bills of lading

The shipment of six containers of castor oil, worth USD 270,000, was arranged by a ship agent member of ITIC. The containers were to be transported from India to Antwerp. Unfortunately, the Belgian agent released the cargo to the consignee against a bill of lading that appeared genuine at first glance – but was in fact a clever forgery.

The shipper claimed they had not been paid for the cargo and still held the original bills of lading. As such, they arrested one of the carrier's vessels in India and obtained a bank guarantee from the carrier as security for their claim. In turn, the carrier looked to their ship agent for indemnity.

The ship agent contacted ITIC for support. Unfortunately, examination of the bills of lading that had been presented showed that the agent should have spotted the forgery. The agent had therefore been negligent. The forged bills included clearly incorrect details, such as the name of the load port and also spelling errors including the name of the carrier. The claim brought against the carrier by the shipper was for the cargo value plus costs and interest.

The case was fought in the Indian courts, which is usually a slow process. As it was unlikely that the claim could be successfully defended, ITIC and the carrier pushed the shipper to settle the matter. Finally, after almost four years of negotiations, a settlement of USD 160,000 was agreed, USD 100,000 less than the original amount claimed. ITIC also reimbursed the carrier's legal costs and the bank charges incurred in maintaining the bank guarantee.

It has never been easier for documents to be cleverly forged and ship agents need to ensure that they thoroughly check the details on bills of lading and other such documentation.

Absolutely bananas

A ship agent overlooked the filing of some customs documentation for two containers of bananas due to be loaded on a ship in the Caribbean. Due to this error, the two containers remained in port.

The next available ship was a week away, so the decision was taken to sell the products locally, before the bananas spoiled.

A buyer was found, who purchased the bananas for USD 21,000, however the original price of both containers was USD 45,000.

The agent was therefore held liable for the difference, which was paid by ITIC.

For all updates and information follow ITIC on Twitter: **@ITICLondon**

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Tel: **+ 44 (0)20 7338 0150** fax: **+ 44 (0)20 7338 0151** e-mail: **ITIC@thomasmiller.com** web: **www.itic-insure.com** twitter: **@ITICLondon**