ITIC
THE PROFESSIONAL INSURER

Welcome to the Spring edition of the ITIC Claims Review, which is published to coincide with the March 2011 meeting of ITIC's Board of Directors in Buenos Aires, Argentina. ITIC periodically publish selections of cases, twice a year in this publication, and more specifically in the Wire, which have been recently handled by the Club. This edition provides a general selection of claims ITIC has resolved over the last year. We hope that these 'case histories' will be of interest to Members and help them identify potential claims exposure.

claims review

Issue 23, March 2011

Arctic Arrest

A South American ship agent advised ITIC that the owners of a cruise ship owed them over USD 25,000 relating to the costs of crew and supplies incurred during various calls. Reminders and chasers to the owners had not resulted in payment and it was decided that more aggressive action was needed.

ITIC ascertained that the ship was chartered to a cruise line and was due to sail from a port in the Canadian Arctic for the High Arctic, and had no apparent plans to revisit South American waters. ITIC instructed its Canadian lawyers to arrest the ship where she was in the Canadian Arctic and within hours of the arrest being served the owners paid all the outstanding debts in full.

The owners admitted that they did not think that anyone would be able to arrest the ship in such a desolate place. The owners were wrong and they paid not only the outstanding disbursements, but also the arrest costs.

ITIC
IS MANAGED
BY **THOMAS MILLER**

Defrosted Shrimps

In the ten years from 2000 to 2010 claims against liner agents for errors in passing on reefer temperatures for refrigerated containers or failure to arrange for reefers to be plugged in to the electricity supply at the port have tripled from those reported in the previous decade. More than USD 3,000,000 has been paid out by ITIC, and this is ITIC's second highest category of claim against liner agents (the highest category is inadvertent delivery of cargo without a bill of lading).

One such claim involved two containers of frozen shrimps shipped from Vietnam to Rotterdam, for eventual delivery to another European port. When they reached the final port of destination, the line's agent failed to arrange for them to be plugged into the electricity supply. This resulted in frozen shrimp worth USD 273,000 being a total loss. The cargo insurers paid USD 273,000 and claimed this amount from the line. As the liability of the line was indisputable, as was the agent's liability to reimburse them, it was felt to be a question of settling the claim on the best terms possible.

There was, however, a complication which delayed the settlement with the cargo insurers. The consignee on the two negotiable bills of lading was not the ultimate receiver, but was a trader who intended to sell the shrimp to another company. The cargo insurers had paid the consignee for the contents of both containers and obtained a subrogation of the consignee's rights. The cargo insurers submitted their claim for reimbursement, but in the meantime the ultimate receiver (who had paid for one of the containers and was in possession of the original bill of lading) lodged a second claim for the contents of one container in the amount of USD 170,000, which represented the invoice value, bank charges, and customs costs plus USD 45,000 for lost profit.

The claim by the cargo insurers for the first container was settled by ITIC and ITIC also paid the port and destruction costs. However, ITIC was unable to settle the claim for the second container because it was not clear who was entitled to claim. The cargo insurers attempted to resolve the matter by persuading the consignee/trader to pass on the amount paid in respect of the second container to the ultimate receiver. The ultimate receiver refused to accept this payment because it did not include their claim for lost profit. ITIC was unwilling to settle a claim by either party until it was absolutely clear who was legally entitled to claim.

Although time extensions were granted to the cargo insurers the last of these eventually expired and the ultimate receiver failed to commence legal action within the twelve month period provided in the bill of lading, so the second claim became time-barred and remained unpaid.

Fraud Alert

For a number of years one of ITIC's members had acted as a charterer's broker for a steel trading company. They were asked to find a vessel to lift a cargo of steel coils and circulated the requirement to their usual contacts. They were unable to find acceptable tonnage.

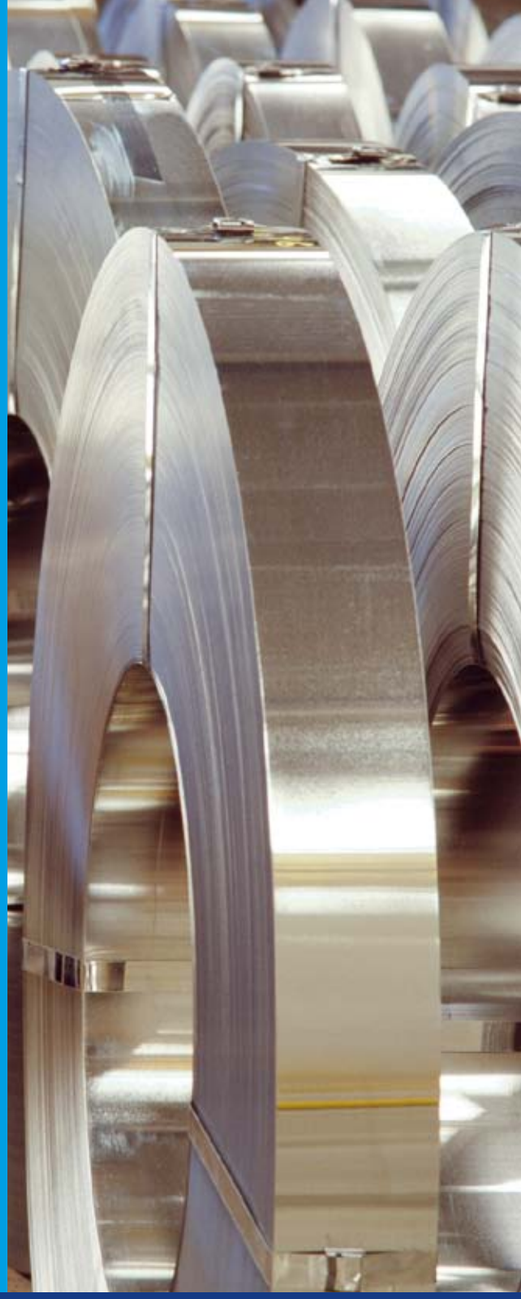
They received an approach from a broker they had not heard of before. The unknown owner's broker advised that the head owner was, Glen Maritime, and that Silver River were the disponent owners. The charterers had previously given instructions that they wished to fix with owners directly. The owner's brokers provided the charterer's brokers with a letter of authorisation from a company called Glen Marine stating that the disponent owners could collect the freight on their behalf. The charterer's brokers felt that this was as good as fixing directly.

When the ship had loaded the owner's broker sent a freight invoice issued on Silver River's headed paper signed and stamped. This invoice was immediately forwarded to the charterers for payment.

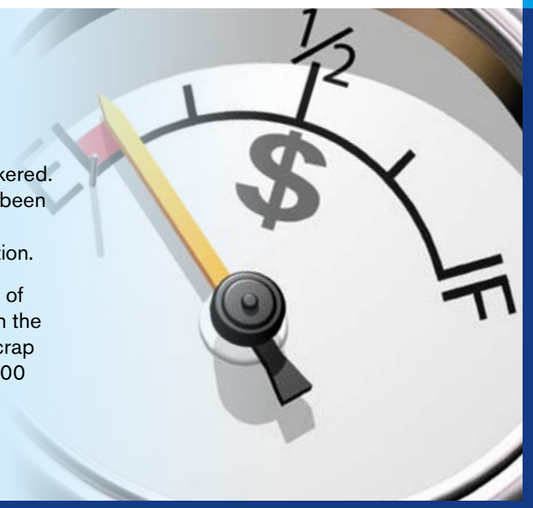
A week later the charterers advised their broker that the head owners had contacted them directly and demanded payment of the freight. The freight remitted to Silver River had not been received by the head owners.

The charterer's brokers tried to call the "owner's broker" but their mobile number and email address had become inactive. They then contacted the head owners who advised that they were unaware that there was more than one broker involved. The head owners denied issuing a letter of authorisation. On closer examination it was noted that the company details on the letter were not identical to the head owners. It became clear that the charterers had been the victim of a fraud. The "owner's broker" had concluded a fixture with the steel traders at one rate, while simultaneously fixing with the actual owners at a lump sum rate. They had then simply misappropriated the freight.

The head owners refused to discharge the cargo until freight was received in their account. The charterer had to pay again in order to obtain their cargo. They claimed from their broker who had not followed their instruction only to fix directly with owners and failed to properly examine the letter of authorisation.



Bunker Bungle



A commercial manager had, for several months, been operating a ship on a regular route which involved a call at Singapore, where she was usually bunkered. The commercial manager was advised by the ship owners that the ship had been sold for scrap and that, on its next call at Singapore, instead of taking on full bunkers she only needed to lift sufficient bunkers to reach her scrapping location.

Unfortunately, the commercial manager's operations team failed to take note of the owner's instructions and bunkered the ship with the usual amount. When the ship was scrapped, the additional bunkers were an unexpected gift to the scrap yard. The owners brought a claim on the commercial manager for USD 95,000 which was the difference in value of bunkers purchased.

Pass it ALL on

Shipbrokers arranged a sub-charter. As is usual the main terms of the sub-charter were fixed with the details "otherwise as per as the head charterparty".

The head charter had been sent to the broker together with a separate addendum. Unfortunately, while the broker passed the charterparty to the sub-charterers they failed to forward the addendum. The fixture was concluded but without the sub-charterer being aware of the addendum.

The addendum contained provisions in relation to the costs of hold cleaning in the event that the vessel carried cement. This cargo had originally been excluded under the head charterparty but had subsequently been permitted on the terms agreed in the addendum. The addendum provided that the sum of USD 7,500 could be paid by the charterer in lieu of hold cleaning. The carriage of cement under the sublet had been agreed in the main terms but the terms relating to the costs of hold cleaning had not been passed to the sub-charterer.

The charterer was left with an obligation to pay the head owner for hold cleaning but was unable to reclaim the money from the sub–charterer. The broker had to reimburse the USD 7,500 which was paid by ITIC.

The Cost of Unrestrained Access To The Internet By Crew

It was the policy of a shipping company to upgrade the communications packages on all their time chartered and owned vessels from systems which provided e-mail and satellite telephone communications only, to systems that also included limited on board internet access at a fixed monthly flat-rate payment. The new systems were being gradually fitted throughout the fleet.

When the existing communications unit on board one ship (which did not include internet access) failed during the first few months of 2009 it was replaced by a modern broadband unit, but not by the new system. This unit was intended to replace the existing e-mail and voice communications only. However, the broadband unit was also capable of internet access via satellite link. The vessel superintendent employed by the ship manager inadvertently failed to exclude internet access when he completed the activation form. During the installation and activation he also failed to notify the crew of its intended use or advise on any tariff rates, which were in his possession.

The crew, who had already been notified of the company's intentions regarding future internet access for all its vessels, wrongly assumed that the new unit had been provided for their unlimited use, and proceeded to download at will. The usual cost of communications under the old system was no more than USD 1,800 per month. Had the intended upgraded system, including limited internet access, been in place the monthly cost would have been USD 3,800. During the first three months, and before the error was discovered, the crew downloaded freely and managed to run up an enormous "airtime charge" of USD 436,000.

As the shipping company had never agreed to this "free for all" use of the internet by the crew they claimed the difference of what they would have paid (USD 5,400) and the actual amount charged from the ship manager.

Not Following Instructions Correctly Results In Cold Spin

Six containers loaded with washing machines were destined for a Venezuelan port via a transhipment port in the same country. The ship agent at the load port incorrectly stated in the cargo manifest that the transhipment port was the final destination. Normally such errors are easily corrected at minimum cost, but this particular error was to prove disastrous, as the destination port was a free port, whereas the transhipment port was not.

The Venezuelan customs authorities seized the cargo and demanded that customs duties were paid; otherwise the cargo would be assigned to the government. ITIC appointed lawyers to negotiate with the authorities in order to release the cargo and send it to its final, and correct, destination. However, it took several months for the cargo to be released, resulting in substantial costs for storage, container demurrage, customs fines and transportation costs. These costs totalled USD 85,500, which the agent had to pay in order to get the cargo released.

Ship agents should bear in mind that customs authorities in many countries are a source of revenue to the government and minor errors which can be easily resolved often result in cargo seizure and fines.

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