

# Claims Review



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ITIC  
IS MANAGED  
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Welcome to the April edition of ITIC's Claims Review. The complete ITIC board successfully met in person, for the first time since 2019, at the end of March in Athens. The board meeting was followed by a drinks reception, which was well attended by over 80 members, insurance brokers and other important contacts. It was nice to finally see so many of our members in person at an event.

Sadly, since our last edition issues in Ukraine have deteriorated. A dedicated webpage has been created which collates updates, circulars and other material relevant to the current conflict in Ukraine: <https://www.itic-insure.com/knowledge/russia-ukraine-conflict>. To date, ITIC has issued five circulars and produced two podcasts on the topic. If members become aware, or have concerns, that clients and/or parties in a transaction have become subject to sanctions, or you are concerned as to whether the sanction regimes apply to any specific transactions, we recommend that specialist sanctions legal advice be taken as soon as possible.

New episodes of ITIC's podcast series, ITIC Insight, continue to be released and uploaded to all of the major podcasting platforms, including Spotify, Apple Podcasts and Google Podcasts. Episodes are hosted by members of the ITIC team, exploring key topics with external guests, including: terms and conditions, UK customs post-Brexit, switch bills of lading and a look to the future of naval architecture. You can find all episodes here: <https://www.itic-insure.com/knowledge/podcasts/>

We would like to extend our thanks to those of you who continue to submit questions for our "ask the editor" feature. Please send any questions that you may have to [askeditorCR@thomasmiller.com](mailto:askeditorCR@thomasmiller.com)

This edition of the Claims Review provides a selection of marine cases recently handled by ITIC. We hope that these case stories will be of interest to you and will also help you to identify potential problems in order to avoid these types of situations occurring in your businesses.

The Editor



## May the force not be with you

A fixture was being negotiated for a March loading. All the correspondence referred to the shipment taking place in March.

However, once the main terms had been agreed, the broker sent a confirmation email containing a recap inserting May instead of March. The broker thought nothing of it until the charterers asked whether the owners had nominated a ship for the March loading.

The owners took a position that they considered the fixture was for May as per the recap, despite May never being mentioned during the negotiations. The owner could not load in March. Therefore, in order to mitigate the potential loss, the shipbroker arranged for another ship to load the March cargo, at a cost of

US\$ 490,000, some US\$ 370,000 more than the agreed fixture rate. As the market was rising, there was a hope that the original owner would have to perform, as fixed, in May, at a rate that would have been substantially below the market rate which would have compensated against the additional fixture.

However, the charterers advised that they would not be shipping in May, as there were quota restrictions on the cargo. As the freight rate had risen substantially there was a negotiation to get owners to agree to wash-out the fixture, which they agreed to, paying a compensation to the charterer of US \$100,000.

The final cost was US\$ 270,000 which was paid by ITIC.

## Paradise is not twice as nice

*The name of the yacht has been changed to a fictional name.*

A banker wished to charter a yacht for a holiday. ITIC insured the yacht broker acting for the charterer who provided details of a yacht MY PARADISE to them, which had been received from the yacht's central agent. Unfortunately, the information provided by the broker to the charterer included pictures and details for a more expensive yacht called PARADISE. The central agent had provided the correct information to the charterer's broker, but it was solely the charterer's broker's error to include the incorrect PARADISE information in the details to the charterer.

Based on the incorrect information the charterer entered into a charter agreement for the MY PARADISE – thinking they were getting the PARADISE. After the

charter agreement was executed and US\$ 455,000 was paid by the charterer, the broker provided them with a promotional video of the MY PARADISE. It was at this point the charterer realised there had been a mistake and demanded the contract be cancelled alleging it was legally invalid and the money paid should be returned. The charter agreement was cancelled and US\$ 353,000 was returned but US\$ 102,000 was kept by the owners of the MY PARADISE in accordance with the terms of the charter.

It was clear that the broker had made an error in sending the wrong details. This was a negligent misrepresentation which the charterer claimed induced them into transaction. Therefore, there was no defence and the claim of US\$ 102,000 was settled in full.

## No fixture, no problem

A ship had been fixed by a shipbroker, who then received notice from the charterer to cancel the fixture due to the closure of Ukrainian ports as a result of the Russian conflict.

The charterparty made the following provision:  
Load port: 1 SB 1 SP Nikolaev. (Owners to satisfy themselves regarding any restrictions incl draft).

Due to the ongoing conflict the ship was unable to proceed to the load port. As a result of the cancellation of the fixture commission was not payable and the shipbroker made a claim under their loss of commission cover with ITIC. The following terms applied:

*“Your commission income in respect of contracts for the charter, sale/purchase or management of a nominated ship not being paid by reason of your loss of legal entitlement to this income because of the termination of the contract due to: war, invasion, acts of foreign enemies, civil war, rebellion or revolution.”*

The full commission was paid by ITIC in the sum of US\$ 48,125.

## Foul up

A commercial manager was held responsible by their principal for failing to arrange a pre-departure survey in respect of fouling of the hull.

The ship had an extended stay at a port in a warm water area and as result there was a requirement to check for marine growth.

The owner alleged that the manager had not made the proper arrangements in a timely manner, having been made aware of the ship's departure date, which subsequently caused a delay to the ship. As a result of the delay a claim was made against the owner for off-hire costs by the charterer.

In turn, the owner held the commercial manager responsible. ITIC obtained expert advice on the liabilities of a commercial manager in such circumstances and it was confirmed that the manager did have a responsibility to arrange the survey.

The claim was therefore settled in full for the sum of US\$ 185,800 which ITIC reimbursed to the commercial manager.



## Q&A with Aysegul Wallis

Aysegul is the newest member of the ITIC team, joining as an account executive in March 2022. In this interview we learn what Aysegul is looking forward to most about her new role and we discover which food she can never say no to.

**How long have you worked at ITIC?**

I joined ITIC at the end of March 2022, however, I already feel like a member of the ITIC family.

**Where were you working before you joined ITIC?**

I was working as a legal consultant when I first moved to England and before that I was working at a private practice law firm in Turkey.

**What are you looking forward to doing in your new role?**

So the list is long but I do not want to bore you. I guess learning as much as I can about my role; travelling to meet with members in person; and recording lots of podcasts come on top of the list.

**Any life ambitions or future goals still to achieve?**

I am still young therefore I have a lot of boxes to be ticked on my bucket list. I want to qualify as a mediator and an arbitrator to deal with maritime law disputes. I think Alternative Dispute Resolution (ADR) is the future. Also, I really want to qualify as a New York attorney.

**What is your favourite saying?**

Great question! Whatever the mind can conceive and believe the mind can achieve...

**What are your hobbies and favourite pastimes?**

I love reading books on personal growth and law of attraction. Some might find it boring but I really enjoy it. Other than that I enjoy watching documentaries and films based on real life. I love going for long walks if the weather

is nice. Last but not least, even though I get no credit for that I am a professional dancer and singer at home!

**What is your favourite food?**

I have three favourites; gluten-free pasta, salad and chips. I can never say no to chips... This is my weakness.

**What is your favourite film?**

Hmm... I always find this question difficult to answer (first world problems). It would have been an easy one if you had asked me what my favourite TV series is. Friends! Anyway, I think my favourite film is A Time To Kill. I love courtroom dramas.

**What is the last book you read or music you downloaded?**

The last book I read is Bigger Than Us by Fearne Cotton. The last music I downloaded is Until I Found a Rose by The Howl & The Hum (just checked my Spotify).

**Any pet hates?**

I do not like it when my parents and my husband forget to turn the lights off. One more thing, I do not like negativity.

**If you weren't working at ITIC, what would you be doing?**

I would probably be working at a private practice as a solicitor and dealing with maritime law. If I did not need to work for the rest of my life I would probably try and establish my own clothing line just as a hobby. Having said that, I love my job at ITIC and would not want to change it. A great place to work!

## Grab n' not go

A bulk carrier arrived at the discharge port with one of its own cranes not operational. The agent, insured by ITIC, made alternative arrangements for discharge which included the hire of a shore crane and grab.

The discharge rate was estimated based on the grab's capacity and pre-funding was provided accordingly. However, it was later discovered that the grab and crane were incompatible. Given the short notice only a smaller capacity grab could be sourced as a replacement, delaying the discharge. The Master verbally authorised the change but not in writing due to time constraints.

Subsequently, owners refused to settle the extra port charges due to the slower discharge rate alleging that they faced a potential off-hire claim from the charterers. This was despite there being no alternative available and it was the ship's crane being broken that caused the slower discharge in the first place.

A claim was made against the ship agent for ordering an incompatible crane and grab and failing to advise on the reduced discharge rate. The claim was defended by ITIC and a contribution was made in settlement of just US\$ 10,000 against a claim of US\$ 50,000.

# Missed messages

A shipbroker received a demurrage claim of US\$ 80,000 by email to their fixture email address, "chartering@shipbroker.com". However, the recap stipulated that all claims must be sent to "claims@shipbrokers.com". In fact, the owner had used this address many times in the past. As a result, the demurrage claim sent to the fixture email address was missed by the broker. Meanwhile, the broker had sent two emails to the owner advising they had not received any demurrage claim yet and that time was running out. These emails were ignored by the owner.

The owner then sent a hard copy of their claim by courier to the broker. The broker rented a floor of their office building but the courier made delivery to the front desk of the building, not to the broker's reception on the correct floor as stipulated in their address. The hard copy never made its way to the correct floor and was lost.

The demurrage claim became time barred and when charterers finally received a copy of the claim they refused to pay on that basis. The owner sought recovery in full from the broker alleging they should have monitored the "chartering" email address for claims and they had also delivered a hard copy.

ITIC defended the claim by stating that although there may have been some oversight in missing the original email, the owner clearly had contributed to their own loss. First, they used the wrong email address; secondly, they ignored two emails from the broker stating they had not received their claim; and thirdly had not sent their hard copy claim to the correct address.

On this basis ITIC recommended a 50% settlement would be appropriate, which was accepted by the owner.



# Angry investors

A marine surveyor was contracted to carry out a valuation of a vessel for an IPO. The valuation was agreed to be based upon a visual inspection only.

The valuation was included in the IPO prospectus and various parties made investments in the company. The market at the time was difficult and ultimately the single owning vessel company entered into administration.

Various claims were made against the surveyor from investors alleging negligence in the valuation report. The claim had nine claimants and 59 third party claim notices. The surveyor denied that their valuation had been negligent. Furthermore, the valuation contained various disclaimers which are usual in all valuation reports.

ITIC successfully arranged for the defence for the surveyor. The claim was successfully defended but unfortunately took 7 years to conclude. The legal defence costs of EUR 144,700 were covered by ITIC.

# Copyright confusion

A marine consultant and marine surveyor worked under the company name of ABC Ltd (not the real name).

The surveyor, without realising, used the logo (really just a type of font) of another company with a very similar name, being ABC LLP. They also used this logo in a video, which was then uploaded by a third party onto social media.

As it turned out, ABC LLP also operated in the field of maritime claims and was the lawful owner of the registered trademark ABC LLP. As a result, ABC Ltd was presented with a claim for damages plus legal fees.

ITIC arranged for a lawyer specialising in intellectual property to review the claim. The advice was that it was very likely there had been an infringement of ABC LLP's trademark. The fact that both companies serviced very similar industries also did not help the surveyor's position.

ITIC managed to negotiate a successful end to the claim, with ABC Ltd agreeing to no longer infringe ABC LLP's copyright. Each party would bear their costs. The legal fees incurred by ABC Ltd were EUR 7,000 which was reimbursed in full by ITIC.



## Consolidated chaos

A ship agent based in Colombia received a claim as a result of an administrative error when entering booking data into the carrier's system and customs system.

The agent was asked to amend a booking, which was originally split over two bills of lading to be consolidated into one bill of lading. The request to do this was made well before the arrival of the cargo in Colombia.

The agent made the changes on the carrier's system but did not make the corresponding changes on the local customs system.

When the consignee presented the Import Declaration and paid the taxes

on the cargo, it was not possible to link the payment with the one bill of lading included in the Import Declaration, since the local customs system had the information of two bills of lading not the consolidated single bill of lading.

The consignee was provided with options to rectify the situation, which required a new import declaration (re-nationalisation of the cargo).

There was a delay from the consignee whilst they decided whether to agree to this approach. Meanwhile, container detention and warehousing costs were increasing.

Eventually the consignee agreed to the process suggested by the agent. As a result, the situation was rectified but the

import of the cargo was delayed by nearly one month. The consignee made a claim against the line, who in turn, held the agent liable for the sum of US\$ 32,000.

The agent had no defences available, as the negligence on their part for not updating the customs system was undisputed.

ITIC arranged for local legal representation for the agent to address any potential customs fine. The lawyers were successful with respect to the customs fine and the only costs incurred by the line and consignee were in respect of the delay. These were paid by the agent and reimbursed by ITIC.

## Tighten the strings

A naval architect designed a series of fast pilot vessels. They completed the designs and submitted them to the classification society. The plans were returned and class advised that the forward stringers should be strengthened.

Any comments from class would usually be made on the plan within a speech bubble. In this instance, class did not do so and the comments were missed by the naval architect. Therefore, the stringers were not strengthened on the final plan. The class society approved the final plans, but did not spot that their initial comment had not been followed through on.

Ten vessels were built in total. After 3 years in service cracking appeared on all but one.

The vessels were designed to operate with a maximum 3.5m significant wave height. However, there were reports that some of the vessels had been operating in 5.5m heights. The builder of the vessels argued that the naval architect should have recommended a significantly higher wave height when advising on the specifications.

The vessels that were showing cracking were lifted out of the water and the forward stringers were strengthened. This cost \$ 50,000 per vessel for the nine affected. The total cost was US\$ 450,000. The builder made a claim against the naval architect for this sum. There was clear evidence that the naval architect had missed the advice from the classification society. However, ITIC managed to successfully reduce the settlement paid to the builder due to the fact that (a) the vessels had been operated outside of their design criteria and (b) class did not notice on the final plans that the stringers had not been strengthened and had approved the design. A total of US \$300,000 was paid to the builder.



## Laycan't win em all

A shipbroker arranged a contract of affreightment ("COA") between owners and charterers. The COA ran for the 2020 calendar year and provided for a minimum of 4 and maximum of 12 shipments per quarter in charterers' option.

On 1st May 2020 the charterer sent an email to the broker declaring that the laycan for the next shipment would be 10-22 June 2020.

The email to the broker was sent to both their post fixture broker's personal email and the post fixture department's email address. Both addresses were correct and had been used before. The emails had however gone into junk email folders. The broker advised that they regularly checked the junk email folders, but on this occasion the message had been overlooked.

The broker was alerted to the issue on 3rd June 2020. The charterer routinely provided a schedule of shipments under the COA and the owner reverted saying that they

had not received the 10-22 June 2020 declaration.

Owners had not arranged tonnage to perform the voyage on the basis of the laycan declared. Charterers advised that they had several cargoes arriving at the same time from different origins and were unable to offer flexibility on the laycan. To perform the fixture owners had to charter-in tonnage at a freight rate higher than that agreed in the COA.

Owners claimed US \$350,000 from the broker to cover their market loss due to the delay in passing on the charterer's nomination. The claim was in line with the market and in the circumstances the broker settled the claim with the owner, which was reimbursed by ITIC.

## One Direction – the wrong one

A ship agent received instructions from their principal to arrange transit through the Panama Canal, from Balboa to Cristobal (northbound direction).

The agent made the arrangements via the Panama Canal Authority (PCA), however, after they had done so they realised that they had arranged Cristobal to Balboa (southbound direction) in error.

The agent immediately notified the PCA who cancelled the reserved southbound slot with no penalty charge but could not replace it with a northbound slot as there were none available. However, there is an auction of slots closer to the date of passage. The average slot price is US\$ 40,000 whereas at these auctions the starting bids are usually US\$ 55,000 and have gone as high as US\$ 430,000.

Luckily, the agent managed to secure a slot two days earlier than the actual requested date for US\$ 183,600. The owner saved two days of costs (around US\$ 40,000 a day) and as a result agreed to contribute US\$ 123,600. The agent contributed US\$ 60,000 which was reimbursed by ITIC.



“The best way to protect yourself is to obtain specialist sanction advice from a law firm in your jurisdiction.”



## Ask the Editor

Unsurprisingly, we have had many emails asking us about sanctions over the last few months. This particular question summarises the issue we have seen quite well:

“As a shipbroker, we are concerned about the numerous different sanction regimes in place in respect of the Ukraine/ Russia conflict. How do you suggest we protect our position?”

This is an interesting question. Since the invasion of Ukraine, countries around the world have introduced many sanctions at record speeds. It is sometimes difficult to keep up.

First, you need to check which sanctions apply to you. You need to consider issues such as:

- Where am I physically based?
- Where is my company registered?
- Do we have any offices in other countries that could affect this office?
- Do we have any foreign staff members subject to different sanction regimes? For example, US sanctions can apply to US citizens no matter where they are based, even when outside of the USA.

You need to check whether your principal or any other company in the proposed transaction are listed in any sanction regime that affects your company or staff. This can be done by checking the relevant government websites or by signing up to third party service providers that perform checks on your behalf.

As a starting point, in the UK the government website contains a sanctions list here: <https://www.gov.uk/government/publications/the-uk-sanctions-list>. In the USA you should look at the US Government’s OFAC SDN list <https://home.treasury.gov/policy-issues/>

financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists.

As well as named individuals and entities you may also need to look at the type of trade itself. For example in early March the US banned the import of Russian crude oil, LNG and coal. Military equipment or “dual use” goods should also be a red flag.

Second, the principals to the fixture or deal will also have their own duty to check their own position regarding sanctions. They should not rely on your checks. Your checks should be for your own position which may well be different to your principals who could be based in different jurisdictions. It is not your job as a broker to provide sanctions advice to your principal. They should take their own legal advice.

In reality, dealing with Russian entities whether or not they are sanctioned may lead to issues with payments of commission as there is a chance that the Russian banks involved in the deal may themselves be sanctioned or subject to prohibitions.

Ultimately, the best way to protect yourself is to obtain specialist sanction advice from a law firm in your jurisdiction in respect of the specific deal you are thinking about entering into.

Please continue to send in your questions – we are enjoying them. You can email us at [askeditorCR@thomasmiller.com](mailto:askeditorCR@thomasmiller.com)

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