

Claims Review



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Brand new podcast series

ITIC
IS MANAGED
BY **THOMAS
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Welcome to the April edition of ITIC's Claims Review. It is now over a year since the first lockdown was imposed in the UK and we know that many of you all over the world have also been subject to restrictions, with many of us working from our homes during this time.

Whilst we are unable to travel to meet members and insurance brokers, we are continually looking for new ways to reach you and as a result we have launched a new podcast series called ITIC Insight. Episodes are hosted by members of the ITIC team, exploring a key topic with external guests or hosting an interview with a board member or insurance broker. More information about this series can be found on the back page of this publication.

The Claims Review provides a selection of cases recently handled by ITIC. We hope that these case histories 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.

We would like to extend our thanks to those of you who submitted questions for our "ask the editor" feature. Please send any questions that you may have to askeditorCR@thomasmiller.com

The Editor

Forgotten fees

A P&I Club Correspondent was instructed to assist the P&I Club on a personal injury matter in South America.

A stevedore at the discharge port was injured when a spring on the ship broke off and hit him whilst he was on the pier receiving the cargo.

An administrative investigation into the accident was opened and some months later found that only the ship should be investigated in respect of the accident. An appeal was lodged against this finding, which was successful and it was accepted that the terminal operator should be investigated as well.

However, no further investigation took place. The case remained quiet for nearly two years until a hearing was convened with the local port agent. At the hearing it was contended that the port agent had no responsibility for the accident, and that any claim should be submitted to the terminal operator instead. All this was done in coordination with the P&I Club.

Eventually formal legal action was commenced by the State against the ship's Master and the local port agents as a "Responsible Third Party".

The P&I Club was continuously kept informed of all developments and it was recommended that a specialist criminal lawyer be appointed. The P&I Club agreed and the lawyer was appointed.

After a couple of months the P&I Club asked for an estimate of the fees to which the correspondent replied, US\$ 50,000.

The matter continued for many more months. For reasons unknown the correspondent omitted to forward the translated detailed invoices of the lawyer to the P&I Club. Eventually, the invoiced amount for legal fees had reached US\$ 290,000 when the P&I Club became aware of them.

The P&I Club used this as an excuse not to pay the invoices, stating that the correspondent should pay them instead.

This put the correspondent under pressure as the lawyer threatened them with legal action if the invoices remained unpaid.

ITIC supported the P&I correspondent in discussions with the P&I Club. After some negotiation between the correspondent and the lawyer, the fees were slightly reduced and ultimately the P&I Club agreed to reimburse the correspondent in full. After all, even though the amount of the invoices had come as a surprise to the P&I Club, they were covered under the policy and the P&I Club had suffered no detriment by the late notice of the invoices.



Pumice problem

A port agent was appointed by the charterer and cargo owners, for the call of a ship carrying biomass (wood pellets) to a UK port.

The agent in turn appointed stevedores at the port to handle the discharge of the cargo. When instructing the stevedore, the agent failed to highlight their agency capacity.

Mid-way through discharge of the wood pellets, the hopper being used was commandeered by the port for the discharge of pumice stone from a different ship. After completion of the pumice stone discharge, the hopper was taken back to the original ship to continue the discharge of the wood pellets. Unfortunately, it appeared that the hopper had not been cleaned after discharging the pumice stone. It was found, after all the cargo had been discharged and transported to the warehouse, that the entire load of wood pellets had been contaminated by pumice stone.

The charterer held both the agent and the stevedores liable for the damage. The stevedores attempted to hold the agent responsible due to their failure to make it known to them that they were an agent. However, ITIC argued that this ultimately made no difference because even if the cargo owner could only claim against the agent, the agent could claim from the stevedore in any event. **Ultimately the claim was settled by the stevedore for GB£ 220,000. The agent's legal costs were covered by ITIC.**

An unhap-pea shipper

A ship was fixed to load a cargo of peas. The ship agent produced all the necessary documentation for the shipment. Unfortunately, they described the cargo as "116 shipments of peas" instead of the 1160 shipments of peas the shippers had delivered.

This meant that the full cargo was not properly recorded and the shippers were not paid for 210 tons. The loss claimed by the owner was EUR 40,250. The agent settled the claim in full which was reimbursed by ITIC.



Crew change catastrophe!

A shipbroker fixed a time charter trip in the Far East. There was a term in the charterparty that there could be "no crew change on the laden voyage". However, during the laden voyage the owners sent a message to the shipbrokers' operations department advising that on the way to the discharge port the ship would make a quick stop to conduct a crew change.

The shipbroker failed to pass the message on to the charterers. When the charterers discovered the deviation they protested that neither the owner nor Master had informed them. The charterparty provided that no crew change was allowed due to the regulations of the discharge port. These provided that the ship could not berth for 14 days after the completion of a crew change. There was accordingly a delay at the end of the voyage.

Although the owners accepted they were in breach of the charterparty they suggested that had the shipbroker passed on the message the charterers probably would have reverted with information about the discharge port and the owners could have made other arrangements. In the circumstances the brokers contributed US\$ 10,000 to compensate the owners for some of the off-hire time.

Failure to obtain free pratique proves costly

A ship arrived in port and due to previously agreed arrangements, began discharging cargo prior to obtaining free pratique. This is known as a "quick start".

However, due to Covid-19 the port had changed their policy on quick starts without free pratique. The owner was unaware of this change when they arranged the cranes directly with the port, as the local agent had not advised them. Meanwhile, the agent had been delayed in respect of this ship because they were dealing with another ship which belonged to the same owner.

The owner tried to recover the crane charges whilst awaiting free pratique. These costs were US\$ 30,000. As the owner had instructed them directly without the agent's knowledge, but as the agent had failed to inform the owner in advance of the change regarding quick starts it was agreed to split the costs on a 50/50 basis. The agent's share was indemnified by ITIC.

Q&A with Tom Irving



Tom Irving, director and general manager of ITIC, sits down to chat with the Claims Review editor for the third in a regular interview series, where we get to know ITIC's claims handlers. In this interview, Tom discusses why he enjoys handling claims and we find out why he has become a pro at using a sealant gun!

How long have you worked at ITIC?

It was 10 years in February - which by ITIC standards makes me a relative newcomer! Prior to joining ITIC in London I worked for the TT Club in Sydney for three years. I didn't move to London for the weather...

How do you balance claims handling with your other roles and responsibilities?

I don't find this too much of an issue but there will always be days when one particularly complex claim, or one that needs urgent attention, can take a while to work through and take a chunk out of your day. I enjoy the claims handling part of the role - a good result on a claim is something a member tends to remember for a long time!

What is the biggest challenge when it comes to claims?

Sometimes it can be a challenge to untangle a situation as described over an e-mail so I find it often helps to have a member talk you through what has happened over the phone, rather than going back and forth on email to try to get the full picture.

What is the most memorable claim you have handled?

Within my first week of joining ITIC I was given a claim involving a ship agent in Papua New Guinea whose employees had been arrested and thrown in jail when a ship under their agency had allegedly departed from PNG waters, under the cover of darkness, while under arrest. The vessel had been arrested as the local customs authorities believed it to be carrying fuel oil which they said had been illegally loaded in a remote part of the country. I did wonder what I had come to but fortunately ship agency isn't generally such a dangerous profession! ITIC instructed local lawyers to assist the member and eventually the staff were released when the authorities could be persuaded they had nothing to do with the "smuggling".

Any life ambitions or future goals still to achieve?

There is a sushi restaurant in Tokyo, Sukiyabashi Jiro, where I would love to eat. It is notoriously difficult to get reservations and I have tried in the past but to no avail. I've probably built it up too much in my mind thanks to the challenge of getting a booking.

What is your favourite food?

Impossible to choose but I'll go with Vietnamese. There's a great little Vietnamese cafe called Hohaki near ITIC's office in the City, which I hope will still be there when we finally get back into the office.

What is your favourite film?

I watched Forest Gump again recently and remembered what a good film it is, particularly for the music.

Any pet hates?

Lateness. I am quite forgiving of others but can't stand being late myself, to anything! Having said that, I'm not someone who likes to be at the airport hours early for a flight.

How are you finding working from home during this period of lockdown?

I can't complain, our IT systems have performed admirably and it has been a busy year for ITIC. The first lockdown in the UK coincided with the start of spring so it was good being able to get out each evening for some fresh air. That required a bit more motivation over the winter months!

Have you developed any new skills during lockdown?

A fortnight before lockdown I moved into a house which was (and still is, in large parts) stuck in the 1970s - avocado bathroom suite etc. So lockdown has provided a good opportunity to hone my DIY skills - I have become adept with a sealant gun!

What do you miss the most about life pre-lockdown?

Travel. I was fortunate to have just returned from 6 weeks in New Zealand prior to the UK's first lockdown, but I am itching to get on a plane again - to anywhere!

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

Realising I would never make it is a cricketer, as a child I harboured an ambition to be an umpire. I think the international travel was the main attraction, but I've managed to get that at ITIC so things have worked out pretty well.

Testing times

A ship was put into Manila anchorage en route to a discharge port for a crew change as there were Filipino crew on board. The crew change at Manila was organised by the ship manager, through an appointed port agent. All the prescribed Covid-19 protocols were followed.

Once back en route the ship sent its port entry and free pratique documentation to the discharge port agent for arranging the inward clearance. The agent and authorities discovered in the documentation that a Covid-19 test result for one of the crew members, signed-on at Manila, was positive.

Evidently, one of the joining crew members had tested positive for Covid-19 but the Covid-19 positive test was overlooked. It was not noticed by the ship manager, the port agent at Manila, the health and

immigration authorities or the Master. It was only identified by the discharge port agent.

The ship had to return to Manila in order to test the entire crew and replace them as necessary. The ship also had to be disinfected before resuming the voyage. This resulted in about five days additional steaming at sea plus about six days at Manila.

The ship owners claimed about US\$ 350,000 losses from the managers. However, ultimately a settlement was negotiated, as many parties failed to spot the positive test – including the owners themselves.

The manager settled the claim for US\$ 175,000, which was reimbursed by ITIC.



Fuel fraud

Part of the details of a fixture was that the owner would deliver the ship to the charterer with a certain quantity of bunkers on board.

A ship was coming off hire from a previous charterer who, under that charter, was also responsible for returning the ship with a set quantity of bunkers. The returning charterer put the broker in contact with their usual ship broker in China as it made sense for that supplier to provide all of the bunkers (part funded by the first charterer, and part by the owner).

The broker began to communicate with the bunker supplier to make the necessary arrangements. The bunker supplier sent the broker an invoice for US\$ 300,000 in respect of the owner's share of the bunker costs.

The following day, the broker received a subsequent e-mail purporting to be from the bunker supplier advising that their bank details had changed. They attached a new invoice for US\$ 300,000 containing the changed details. The broker failed to notice that a rogue "r" had been inserted into the sender's email address and that the telephone numbers in the e-mail signature had changed. They were now dealing with a criminal party.

Anticipating that the broker may have procedures which required new bank details to be verified by phone, the criminal "bunker supplier" called the broker themselves and read back the bank details, which the broker believed to be genuine.

The broker passed the fake invoice to the owner, who paid it. The genuine bunker supplier then queried why they had not received payment, and the fraud was discovered. The owner brought a claim for US\$ 300,000 against the broker on the basis that it had been the broker's role to verify the bunker supplier's bank details, and in failing to do so they had been negligent.

It was noted that the owner had been given the opportunity to see that the e-mail address of the party sending the fake invoice had changed, but they, like the broker, did not notice. Furthermore, they were being asked to pay to a bank account, the name of which bore no resemblance to the name of the bunker supplier. Seemingly, they had undertaken no checks at all to verify the bank details themselves. However, it was also clear that – particularly having taken on the obligation to verify the bank details the broker had failed in

their duty to do so and this negligence had ultimately caused the owner's loss, albeit the owner had contributed to their own loss. After some negotiation, the claim was settled with the owner for US\$ 150,000.

This claim illustrates the importance in using publicly available phone numbers (e.g. from a website) to contact a party requesting payment and not to rely on either (a) the party contacting you or (b) the number provided on the "fake" invoice/e-mail. Also, further enquiries should be made if the bank account name provided bears little or no resemblance to the name of the supplier. Although not the case here, you should also be concerned if the bank is in an unrelated country to the supplier. These are "red flags" which should alert brokers, agents and managers to potential criminal activity.

For more advice on the topic of fraud, listen to the ITIC Insight podcast episode entitled "the phone is a key weapon to fight fraud": <https://www.itic-insure.com/knowledge/podcasts>.



Fraud warning

Sent to the scrap heap

A local authority appointed a marine surveyor to carry out a valuation.

A vessel was purchased and secured at a dock by the new owner. Whilst there it was described as an “eye sore” and was in danger of sinking, leaking pollutants and/or colliding with moving vessels. It was classed as “marine debris” and the local government decided to remove and relocate the vessel.

The local authority of where the vessel was relocated appointed a marine surveyor to carry out a report on the vessel. The report determined that it was unsuitable for use or even repair and valued it at just US\$ 1,000 for scrap. As a result, the local authority towed

it to the vessel salvage yard where it was dismantled.

The owners of the vessel were in disagreement with this decision and demanded compensation of over US\$ 200,000. Eventually the owner sued the surveyor, the local authority and three other third parties.

Lawyers were appointed to protect the surveyor. The main defence for the surveyor was that they were not responsible for the removal and scraping of the vessel. They were simply appointed by the local authority to carry out a valuation survey.

This was a strong defence, however US\$ 50,000 in legal fees had already been incurred, before a trial had even started. Therefore, it was considered that a nuisance value settlement would be the best option if it could be obtained. In discussion with lawyers and the other parties the surveyor settled their portion of the claim at US\$ 20,000 (which was far less than the fees of going to trial). The combined settlement for the other four parties totalled US\$ 240,000.

In total, this claim cost the marine surveyor US\$ 70,000 which was covered by ITIC.

Disputed design defects

A naval architect designed a motor vessel for a yard. Two vessels were built following the design.

After the vessels were built and delivered to their respective owners, various deficiencies were noted. The yard alleged that the deficiencies stemmed from negligent design. The yard repaired the vessels, as they were obliged to do under the warranties they had provided. They then sought to recover the costs of the work from the naval architect. A claim of US\$ 120,000 per vessel was presented. Following advice

from an expert the naval architect’s position looked promising. There were many unfounded allegations as well as claims in regards to defects which were not within the naval architect’s remit, for example problems with piping supplied by the yard.

With detailed technical assistance from the naval architect and the appointed expert, ITIC was able to successfully negotiate with the yard a settlement of US\$ 35,000 in respect of both vessels.



On thin ice

A shipbroker received a claim from owners for ice dues and winter surcharge on towage at a Baltic port to be passed on to the charterers.

The claim was sent to the charterers using an “opsclaims” e-mail address. The shipbroker advised owners that the claim had been passed on, but did not confirm that the claim had been accepted by charterers.

At subsequent weekly intervals for the following four months, the shipbroker sent a chaser to the charterer, using the same email address to which they had sent the claim. They then followed up monthly, still using the same e-mail address. Some 14 months later the shipbroker realised that the e-mail address was incorrect and they should have been e-mailing “claims@”. They then sent the claim to the correct address, at which point the charterers confirmed receipt, but advised that it was now time barred.

The brokers looked at ways of mitigating the loss, but charterers would not accept any liability for the claim. **As a result, the brokers had to pay the owners the value of their claim, which was US\$ 50,000. They were reimbursed by ITIC.**

Seeing double

ITIC insured a naval architect who was contracted to design two superyachts for two different owners, both to be built at the same yard. Each owner was under the belief that they were to get a unique yacht.

In the contract for the first of the two yachts, the designer contracted on the basis that all intellectual property rights in the project would belong to the owner in perpetuity.

The second yacht was built and launched with the yard using the same engineering platform. The platform dictated the overall look of the yacht, but the naval architect went to great lengths to make material alterations and embellishments to make the second yacht a new work and/or design.

After the launch of both yachts, they happened to be at the same anchorage, at which time the first yacht owner's partner commented that the yacht next to them looked very similar. Shortly afterwards the first yacht owner commenced litigation against the naval architect for breach of their design contract.

The merits of the case were strongly in favour of the naval architect as they could show material alterations and embellishments in the second design. Moreover, any similarities were either a result of the underlying engineering platform of the yacht or were considered to be the house style of that particular naval architect. For example, a designer like Porsche may manufacture many different models of car, but they all have a particular house style – so a third party will instantly know it is a Porsche. This is the same reason why the owner chose the particular yacht designer.

The dispute was brought in multiple jurisdictions. The matter was defended and eventually the claimant gave up. **However, the legal costs to defend the naval architect totalled EUR 340,000 which ITIC paid in full.**

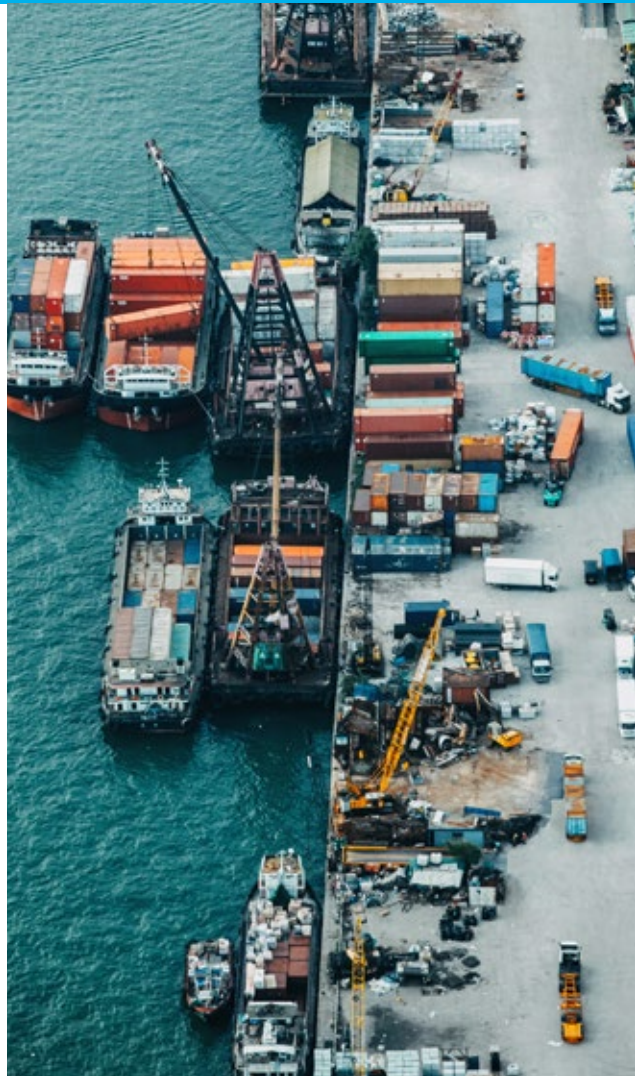
Final destination disaster

Upon request from cargo owners, a ship agent was asked to change the final destination on four bills of lading from Hong Kong to Singapore.

The agent updated the information in the owner's software system before the cargo arrived at the first transshipment port. The agent forgot to advise their agency office in the transshipment port about these changes and as a result they were not spotted. Therefore, the agents at the transshipment port advised stevedores to prepare the containers as if they were being shipped to Hong Kong.

The containers were loaded onto the ship. The next day, the agency in the transshipment port noticed the error and asked their principal for their instructions on how to solve the situation. The principal told the ship agent how to alter the software in order to show that the containers were now proceeding to Hong Kong as originally planned, as the ship had to call at Hong Kong in any event.

The agent then proceeded to change the delivery port on each bill of lading back to Hong Kong from Singapore. The agent subsequently received a claim from the principal in respect of costs incurred due to the error of US\$ 21,728. This sum related to the costs of unloading and reloading the 29 containers at the port of Hong Kong to send them to Singapore. This claim was settled and the payment was covered by ITIC.



ITIC Insight

The professional indemnity podcast
for transport professionals

ITIC Insight is the brand new podcast series where we will be discussing the important issues and challenges facing transport and insurance professionals across the world, whilst offering loss prevention advice and our insights on key topics. A new episode will be released every other Wednesday with a focus on topics, interviews with insurance brokers and interviews with ITIC's board of directors.

Episodes currently available include:

- Crew scams and people smuggling
- IMO 2021 cyber requirements
- Fraud and how to protect yourself and your business against digital scams
- The Inventory of Hazardous Materials (IHM)
- An interview with ITIC's Chairman, Lars Säfverström.

Featured future topics include switch bills of lading, cyber security, loss of shipbroker's commission and surveyors' indemnity wordings. There will also be a series of interviews with insurance brokers and ITIC's board of directors.

You can listen to the podcasts on our website, Spotify, Apple Podcasts, Google Podcasts and a host of other podcast streaming sites: <https://www.itic-insure.com/knowledge/podcasts/>



We hope you will find the series interesting and informative.



Ask the Editor

Please continue to send in your questions – we are enjoying them.
You can email us at askeditorCR@thomasmiller.com

We keep being asked to sign Non-Disclosure Agreements (NDA) by clients and potential clients. If we sign these do we prejudice our insurance cover?

Many thanks for this interesting question. As NDA's have become almost ubiquitous in business this is a query we see more and more often. We provide cover to the member when they perform their insured services in the "normal course of business". This includes "contracting or endeavouring to contract on terms and conditions usually applicable for the performance of those insured services". Therefore, as long as signing an NDA is within the usual course of business we would not take issue with a member signing one.

Please note that policy exclusions will still apply, so for example, take care to avoid agreeing to any punitive or exemplary damages and/or liquidated or contractual penalties.

In order to assist you to identify some usual terms in an NDA and avoid some common pitfalls, ITIC has produced an e-learning seminar which can be seen here: <https://www.itic-insure.com/knowledge/elearningconfidentiality-agreements/#seminar>

As with any contractual document, we recommend you obtain your own legal advice before signing if you feel it is necessary.

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