

Claims Review

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Ask the Editor - “what is negligence?”

ITIC
IS MANAGED
BY **THOMAS
MILLER**

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Welcome to the October edition of ITIC's Claims Review.

The ITIC board met for their September board meeting in Cyprus. ITIC remains in great health and the [Chairman's 2024 statement](#) can be found [here](#).

Cyprus was chosen as the venue, in part, to mark the launch of ITIC Europe, which is based in Limassol. A drinks reception was held at the Amathus Beach hotel which was well attended by many members, insurance brokers and other important market contacts. For any readers who wish to learn more about ITIC Europe the following [Frequently Asked Questions](#) may be helpful.

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.

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.



ITIC, ITIC Europe and TIMIA boards

Conflicting clauses

A shipbroker acted as the sole broker for a voyage charterparty.

The charterers and owners both had their preferred laycan clauses and instructed the broker to use their specific clause. The broker did not spot that the clauses were conflicting and inserted both into the recap. The parties did not notice either and the fixture was agreed containing both clauses.

Ultimately, the ship was facing delays at the port of discharge (of the cargo for the previous fixture) meaning owners thought they would miss the existing laycan for the port of loading in the subject fixture.

Owners therefore exercised the option of their laycan clause to re-tender a new laycan which the charterers had a specified window of time to reject.

If the charterers did not reject within the set time, then the owner's new laycan would be deemed to be accepted.

The charterers did not reject the proposed new laycan which, for the owners, constituted acceptance. However, once the charterers also realised there would be a delay, they exercised the option in their clause to simply cancel the charterparty. They found a new ship and proceeded accordingly.

With no cargo, the owners had to look for alternative employment. The best alternative would position the ship in a less favourable position for the next cargo than the subject fixture, thus causing alleged losses.

The mitigation of the ship owner was questioned and the claim negotiated down to US\$100,000 from US\$400,000 which ITIC reimbursed to the shipbroker.

Costly missed message

A shipbroker acted on a fixture in which main terms were agreed. After the owners confirmed the recap they said to the broker that a certificate for the ship would be issued soon but that for reference, the charterer could check the certificate of a sister ship which was almost the same, and where “the navigation area is R1 as well”.

The certificate for the sister ship was not passed onto charterers as the shipbrokers themselves did not receive it as their spam filter blocked it. The shipbroker finally received it via a Whatsapp message but still had issues transferring it to their email system. Believing the actual certificate for the ship would be received shortly, the brokers did not bother to pass on the certificate or even just the comment that ‘navigation area is R1’. The charterers lifted subjects subsequently.

The issue arose when voyage instructions were passed on to the Master, who advised that the R1 notation meant that the ship could not sail beyond a certain distance from shore. This meant that the ship could not perform the intended voyage.

A without prejudice negotiation ensued, resulting in the charterparty being cancelled and a separate agreement being reached for the charter of the ship for a shorter period but at a higher rate.

During these negotiations, charterers became aware that owners had advised the shipbrokers of the R1 notation before charterers lifted subjects. As a result, charterers alleged a claim against the shipbrokers for breach of contract/negligence and claimed their losses for the cost of additional time and bunkers during the replacement one round trip charter, the costs of hiring a replacement ship for the balance of the charter period, additional insurance costs and legal costs.

There were issues as to who the broker owed a duty to, as charterers had their own broker, and the applicability of the commission agreement was in question. Further, the losses claimed were unclear and not evidenced. However, the charterers commenced arbitration against the shipbrokers. Legal advice was obtained by ITIC, on behalf of the shipbroker, which said it was likely the shipbroker would have a liability (either directly to the charterer, or the charterer would have a claim against the owner, who in turn would have a claim against the shipbroker for failing to pass on the message, which would be a more expensive option than the first).

Following receipt of further information, clarification of the claim, and arguments made regarding the charterers’ actual losses, the claim was settled for about US\$380,000 which was around 70% of the initial full claim.

Grain pain

A pool manager fixed a ship to load a cargo of grain at a South American port.

However they advised the owner in the pool of the wrong costs, which were then used to calculate freight. The manager had calculated the port costs based upon an earlier Final Disbursement Account (FDA) for a previous call by another ship at the same port. Those costs were US\$80,000. However, the current ship was bigger by 40,000 MTS, placing it in a higher pricing bracket under

terminal rules. Furthermore, the ship had a deeper draft and a second pilot was required.

The final port costs, estimated by the manager at US\$80,000 were actually US\$220,000. The loss to the pool was therefore the amount in excess of US\$80,000 ie US\$140,000 – which they did not put into the freight.

ITIC settled this claim in full.

Interview with Maggie Hui Li

Claims executive



Maggie Hui Li, ITIC's claims executive, sits down to chat with the Claims Review editor, as part of this regular interview series in which we get to know ITIC's claims handlers. Maggie joined ITIC's claims team in January 2024 and has a passion for shipping, inspired by her childhood in northern China and further studies in shipping law. She enjoys the mutuality concept at ITIC, solving claims like a detective, and has diverse interests including reading, traveling, and cooking.

How long have you worked at ITIC?

I joined the claims team at ITIC at the end of January 2024.

Why did you decide to work in shipping?

When I was a very young girl in a coastal city of northern China, I wanted to see the rest of the world. That's why I chose international trade and economics for a first degree and then shipping law. When I was fortunate enough to get a scholarship for further shipping law studies at Southampton University, I jumped at it, which led eventually to work in P&I Clubs and now, I am happy to say, with ITIC.

What do you like about working in ITIC?

I am fascinated by the concept of mutuality, and about how to apply it across the great variety of shipping related work performed by ITIC's members in so many different countries around the world.

What is your favourite part of handling claims?

Learning about the relationships between the member and the claimant, and working out exactly what has happened, like a detective, because this usually opens the door to the best and sometimes most creative win-win solutions.

What is your favourite saying?

Every problem has in it the seeds of its own solution.

What do you like doing in your free time?

I like reading, going to museums and art galleries, walking along parks or the coast on sunny days, travelling and learning new recipes to cook.

What is your favourite film?

There are so many to choose from. I recently enjoyed Chariots of Fire which is based upon the true story of two British athletes in the 1924 Paris Olympics, and Chang An which is an animated film portrays life of influential poets of the Tang Dynasty and the rise and fall of Chang An.

What is your favourite TV drama?

The adventures of Sherlock Holmes is one of my favourites.

What is your favourite food?

I like various cuisines from around the world. If I have to pick some, possibly fresh seafood and seasonal fruits. Dumplings and dim sum are definitely on the list too.

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

This Is Going to Hurt: Secret Diaries of a Junior Doctor by Adam Kay. It is a collection of diary entries written by the author during his medical training.

Any life ambitions or future goals still to achieve?

There are still countries which I have not yet been to. I would like to explore the culture & history of those places and meet the people there.

Weekend woes

A ship agent was informed that a ship was arriving on the Monday over a holiday weekend. However, the Master then advised the agent that their ETA had changed to the Sunday.

The agent emailed the terminal the necessary information but did not receive any response from the terminal regarding the revised berthing date. The agent should have telephoned the terminal for their confirmation of the new berthing date, but they did not. Had the agent called they would have learnt that the terminal was not operating that day (a Sunday).

When the ship arrived to berth there was no linesmen/security at the terminal, just the pilot and tugs that had been booked by the agent.

Upon getting notice that the port was closed, the agent requested the pilot to return the ship to the anchorage to await being called to berth.

The ship was called to berth the next day (Monday), as was originally planned prior to the change of arrival notice.

Although the agent was not responsible for the port being closed on the Sunday and the one day delay to berth, they were responsible for approximately US\$60,000 in unnecessary tug and pilot costs – as they had to be paid for two days instead of one due to the agents error.

The agent had a liability to the owner and this was reimbursed by ITIC.



Failing to submit manifest is not fine

A load port ship agent was required to submit an export manifest summary to the port authority.

The port authority requirement was that the export manifest must be submitted by both paper and online formats within ten days of the ship sailing.

Unfortunately, the agent only submitted the documentation in the paper format within the required timeframe – failing to submit online at all.

The authorities levied a fine of US\$82 per day on the owner. However, it took the port so long to realise the export manifest had not been filed online (approximately

one thousand days later or three years) that the back dated fine had increased to US\$82,000.

Clearly, this was ridiculous and partly the port authority's own fault. As a result they agreed to reduce the fine to US\$20,000.

The port authority threatened to suspend the agent's licence unless the payment of the fine was made. The agent therefore agreed to pay the reduced amount in full.

The claim was paid by ITIC.



Naval architect faces curve ball

A naval architect had prepared drawings using CAD software and needed to send these to a company engaged to cut material using the architect's drawings.

The naval architect had not previously worked with this company, who advised them that they could not accept files in the CAD format used by the naval architect. As such, the naval architect converted the files to a different format which the cutter could accept. The cutter produced the materials based on the converted drawings. However, it became apparent that during the process of converting the files to the acceptable format, what should have been curved edges were transposed into straight edges. Therefore, when the material was cut, it did not accord with the correct designs.

The material had to be re-cut at an additional cost of approximately US\$20,000. Due to the naval architect's failure to check that the converted format matched that of the original format they were held liable for this additional cost.

This claim was covered by ITIC.

Confusing switch

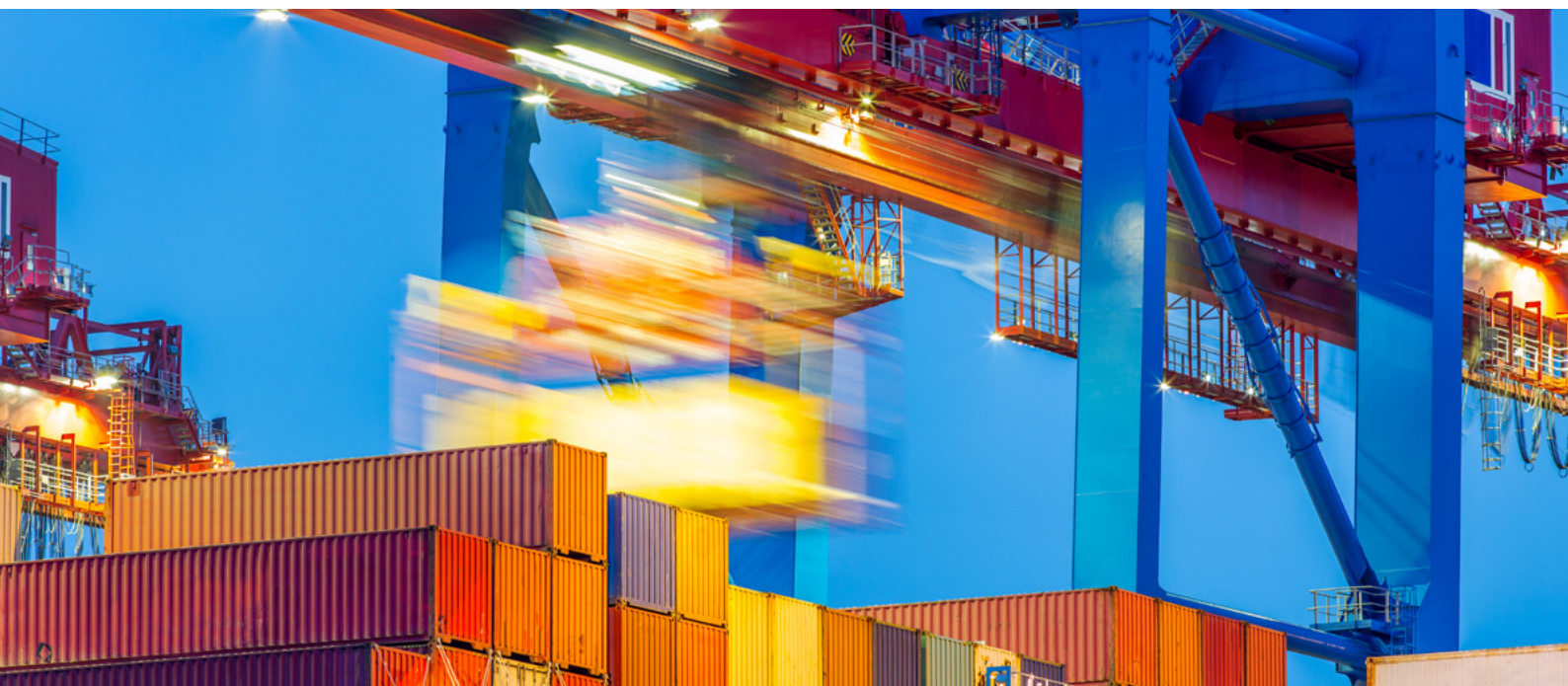
Ship agents released cargo to the consignee who did not have original bills of lading (BLs). The cargo was initially shipped under seaway bills (which do not need to be handed in to get the cargo) and this was subsequently changed to BLs. However, the agent mistakenly thought the goods were still subject to the seaway bills.

The consignee refused to pay for the cargo, alleging that the goods were damaged. The shipper refused to accept this and appointed lawyers to pursue the freight forwarder, who in turn, appointed lawyers to put the carrier on notice. The carrier in turn, kept chasing their agent, although it was explained to them that they had to deal with the claim first.

ITIC received legal advice from the country where the consignee was located and from the country where both the shipper and

carrier were based. The advice was that the shipper would probably win against the carrier (unless there was evidence supporting the consignee's claim – which they did not have) and that recovery against the consignee would be difficult. A settlement offer for 80% of the claim was put forward by the agent. This was rejected by the carrier and the shipper. ITIC pushed the carrier and requested evidence to check that they were taking proper action against the shipper to mitigate their loss. This was not forthcoming.

The carrier was put on notice that they were the ones inviting the claim and the agent would therefore not be contributing anything further. Finally, the carrier pushed the other parties up the chain to settle at the 80% offered, which was agreed. This sum (US\$60,000) was reimbursed by ITIC.



Rusting in the rain

A ship agent was instructed to arrange for the collection of engine spare parts from the ship and deliver them to the principal's yard.

However, the agent failed to arrange for the pickup in time and the parts sat outside the yard for four days. It was alleged that this waiting time caused rust and damage of over EUR135,000.

The principal held the agent liable for the full amount. However upon review, ITIC identified that the principal

had never provided implicit instructions that the cargo could not be left outside.

It was argued on behalf of the agent that whilst they may have made a mistake with the timings, if instructions about storage were clear, they may have been able to take action to avoid the damage occurring.

The principal agreed with this and accepted a 50/50 settlement. ITIC paid approximately US\$66,000.

Time and tide wait for no agent

A ship agent arranged pilots for a tanker which was due to depart a terminal in the US. The agent was aware that due to the ship's length a daylight departure was required as per the local pilot's guidelines. This was arranged accordingly.

The agent then failed to notice that the tanker was also tide restricted and unfortunately the tide was not working in the agent's favour, and the ship was unable to depart at the arranged time – during daylight hours.

Due to the late notice of cancellation the pilots raised an invoice (which was for US\$28,000). The operator immediately passed this to the agents for settlement as this was purely down to the agent's error.

Over the years, ITIC has seen numerous claims against ship agency members in relation to issues with tidal, draft and air draft restrictions. Remember to check these properly and plan accordingly.



Surplus goods

A ship agent based in Europe was asked to arrange emergency supplies (food, blankets, medical items) for a Navy ship.

The goods were to be collected in Cyprus and the ship agent liaised with a local agent there. Initially the Navy had requested goods with a total value of EUR1,000,000, but later revised that list significantly to a list of goods with a total value of just EUR50,000.

Unfortunately the ship agent forgot to pass the revised list to

the local agent in Cyprus who was still acting on instructions for the full list of goods worth EUR1,000,000. As a result all of the goods arrived at the port for loading in several trucks.

The Navy took the goods they actually asked for and the agent worked hard to try and mitigate the loss stemming from the surplus order with some success, reducing it to EUR350,000.

The losses were clearly a result of the negligent mistake of the agent and therefore ITIC paid the claim.



Charcoal chagrin

A shipping line issued instructions to all its liner agents that when accepting cargoes of charcoal, a self-heating test certificate must be provided before loading onto the ship.

The agent failed to advise the shipper of this requirement in advance, only notifying them once a number of containers had already been delivered to the port. The seller of the cargo was unable to provide the certificate to the shipper straight away.

Whilst the shipper waited for the certificates the containers incurred port charges which amounted to EUR15,000.

The shipper refused to pay as they had not been advised of the need for a certificate before the containers arrived.

The agent was held responsible for these costs by the line.



Ask the Editor

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

I have recently had a claim intimated against my company. What do I need to do in respect of getting you information?

Thank you for your query. For many members, especially those who have never had a claim before, this is a common question. This is actually dealt with in the ITIC Rules and we have produced [a guide on how to report and manage a claim](#).

It should be remembered that the earlier you report the claim (or potential claim) the better. This will always put us in the best position going forward. There is a requirement in the policy for you to tell us about a claim or circumstances which may give rise to a claim immediately upon becoming aware of such circumstances.

Furthermore, it is important to remember that you (and/or your employees) should not admit liability or settle the claim without our prior consent. Doing so can prejudice our future handling of the claim. It makes it very difficult for us to deny liability if you have already admitted you were at fault and caused the loss – especially when upon further investigation it turns out that you were not at fault or that if you were, it was not actually causative of the loss claimed.

Then we get onto the actual query, which is what information should you send to us. The easy answer is all of it. However, it is preferable to have it provided in order and with proper explanations as to what the documents are/what they mean, rather than just dumping all documents on us, so that we then have to spend a lot of time sorting them out ourselves.

The ITIC Rules contains the following clause:

14.4 Information and cooperation: You will cooperate at your own expense in the handling of the claim. You must promptly give the managers any information, accounts,

or documents relevant to any claim and assist in the availability of any property for survey or inspection of or of any witnesses for interview. Information, accounts or documents must be provided to the managers in good order, properly explained and in a form appropriate for the efficient conduct of such a claim. You will make yourself and your employees available for any hearings (arbitration or litigation) or mediation as requested by the Club.

What is negligence?

In its most basic form negligence refers to the failure of a transport professional, such as a ship agent, broker or designer, to exercise reasonable skill and care in their duties, resulting in financial loss or damage to their principal or client. This could include errors in documentation, mishandling of cargo, or failure to comply with regulatory requirements.

ITIC's professional indemnity insurance covers claims arising from such negligent acts, errors, or omissions. It also provides financial protection by covering legal defence costs. If you have made an error, there may still be defences available to you i.e. contractual limitations, time bars, damages claimed as being incorrect etc. It is also possible accusations will be made against you when you have not made an error at all, or an error had no causative effect on the loss (for example, there was an error in the design of a yacht, but it was actually lost due to being hit by a large container ship) and these instances will still need to be defended. This insurance is crucial for transport professionals as it helps mitigate the financial risks associated with potential lawsuits, ensuring they can continue their operations without significant financial disruption.

[You can read about the difference between negligence and gross negligence under English Law here.](#)

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