



SEMAPHORE

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Association of Australia and New Zealand



Managing the Liabilities of a Ship Manager

The liability of a ship manager may not always arise from negligent performance of their services, the International Transport Intermediaries Club (ITIC) has found.

ITIC is a leading provider of professional indemnity insurance to transport professionals and is often asked to provide expert assistance as a recent case demonstrates.

In 2012 a crude tanker suffered an explosion whilst undergoing repairs in the United Arab Emirates (UAE). After investigation by the UAE authorities, the matter was closed without any action being taken against the master, owner or managers.

The vessel was sold, unrepaired and a settlement was reached between the owner and the insurer without the involvement of the ship managers. Although the ship managers were named as a co-assured under the vessel's insurances, neither the owner nor the insurer asserted any claim over the ship manager who assumed the matter was now closed.

Seven years later, in 2019, the managers became aware that back in 2013 – in the UAE – the insurers had commenced litigation proceedings against them and five other defendants. The claim was for US\$26 million.

The other defendants were able to appoint lawyers to represent them in court, but as the ship managers were unaware of the claim, they did not do so. Claims against the other defendants were dropped, leaving the ship managers liable for US\$20 million plus interest at 9%.

ITIC was engaged to appeal the claim which was dismissed. ITIC tried a second time and was again unsuccessful. However, due to the ship managers having no presence or assets within the UAE, and the UAE having no reciprocal enforcement agreements with the relevant jurisdictions, it was judged to be extremely difficult for the insurers to enforce the award.

Therefore, ITIC began arbitration proceedings on behalf of the ship managers against the owner, to tie any litigations elsewhere back to the management agreement and to secure an indemnity from the owners pursuant to the agreement.

A “drop hands” offer – where both parties agree to cover their own costs and walk away – was made by the managers to settle the approach from the insurers, but this was rejected.

International Transport Intermediaries Club (ITIC)

As a mutual insurer, the International Transport Intermediaries Club (ITIC) has over 90 years' experience providing cover to companies in the marine, naval architecture, aviation, rail, offshore and hydrographic industries, with 3100 members in over 110 countries.

ITIC's insurance has been developed primarily to cover claims of negligence – errors or omissions. Cover can also extend to specialist areas such as debt collection, loss of commission income, cyber liability, cash in transit and directors' and officers' insurance. ITIC's wide cover also includes a unique discretionary insurance which could support claims not normally be paid by other professional indemnity insurers.

In mid-2020, following many exchanges, the ship managers offered a “without prejudice” settlement of US\$540,000, this amount being the managers’ contractual liability limit under the management agreement.

After a counter-offer from the insurer of US\$12.5 million and much negotiation, a full and final settlement of US\$1 million was made and accepted. As legal costs had amounted to almost US\$500,000, ITIC covered the full US\$1.5 million.

In this case, ITIC says the ship managers had done no wrong but were caught up in an extremely complex and drawn-out legal process. Ship managers need to be aware of the pitfalls surrounding their position as a third-party and fully understand the associated liabilities and limits.

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