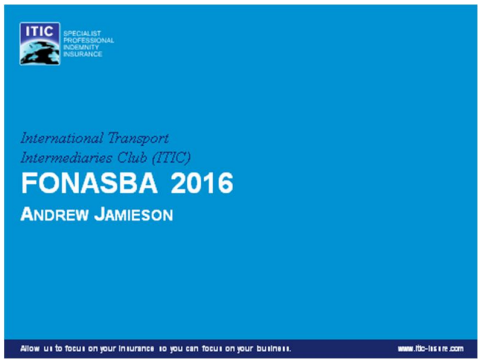
FONASBA 2016

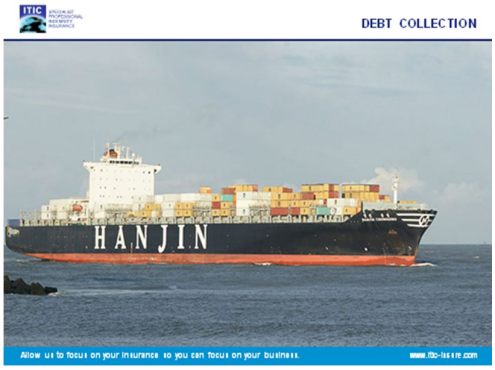


Although we are best known for providing professional indemnity insurance one of ITIC's roles, in fact its original role, is to provide a **debt collection cover** for our members. We pursue unpaid commissions and disbursement accounts for our shipbroker and ship agent members and our policy year runs from 1st June to 31st May.

In the last completed policy year (up to 31st May 2016) the number of debts handled has increased by 5% and most of that increase happened in 2016.

Last year I talked about how ITIC's members were not badly affected by the OW Bunkers insolvency. Indeed, we did not have a large bankruptcy during the last policy year.

How things have changed since 1 June!



Hanjin was the first significant bankruptcy of a container line we have seen for some time. We currently have about 25 files for ship agents that are caught up in this insolvency. We have previously and repeatedly stressed the need for members to take action promptly when they have bad debts. We did send out a circular advising members to contact us. We have assisted members with filing claims in the liquidation and time will tell what recovery can be made. Unfortunately we had few opportunities to secure our members claims before the liquidators obtained legal protection.

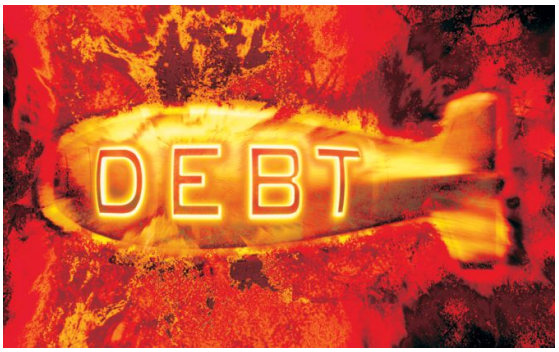
It appears that owners are getting better at going bankrupt - or at least their advisers are getting more experienced! STX Panocean (which produced 32 files) took 10 days to be placed in rehabilitation. Hanjin did it immediately preventing actions against vessels.

Bankruptcies of this nature are not simply a question of unpaid bills. We received a great variety of requests for advice and assistance. Issues included members asking whether it was okay to continue to act for an owner if Hanjin had been the charterer. Other issues were generated by the port authorities refusing to handle Hanjin containers – either loaded containers coming off ships or empty containers being returned by merchants.

As is always the case, the member's commercial interests can be damaged, although they do not have a legal liability. One ship agent pointed out they had a good customer who had 146 containers at sea on Hanjin vessels. The legal responsibilities, may not lie with the agent, but commercially they are likely to lose the client.

We have spoken to a number of our members regarding the current state of the market. Is Hanjin the beginning, or a one-off?

Do we face a debt bomb ?



I don't know!

A bit more positive was an unusual claim to recover commission for a **shipbroker.**

DEBT COLLECTION

Buyer XYZ LTD of Marshall Islands
Guaranteed by Wealthy Parent Co of
Hong Kong

Allow us to focus on your insurance so you can focus on your business. www.itic-insure.com

The MOA *Buyer XYZ LTD of Marshal Islands Guaranteed by Wealthy Parent Co of Hong Kong.*

Nothing unusual there but the MOA said:

DEBT COLLECTION

Buyer XYZ LTD of Marshall Islands
Guaranteed by Wealthy Parent Co of
Hong Kong

"1. Purchase Price is US$ 5.5m less 1% commission to Shipbroker Ltd which to be deducted by Buyers."

Allow us to focus on your insurance so you can focus on your business. www.itic-insure.com

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That is unusual for two reasons. First the commission is rarely mentioned in the MOA and secondly usually it is the sellers who pay commission (with the obvious problem that having sold their only asset they disappear). This was a sale for recycling (as demolition is now called) so the buyers were not going to have the ship for long either. The buyers deducted the money from the purchase price but didn't pay the broker.

The MOA was subject to Singapore law and arbitration which like English law permits the broker (whose commission is set out in the contract) to use that arbitration clause.

We started arbitration and since XYZ Ltd had scrapped the ship we added the guarantor *Wealthy Parent Co of Hong Kong* as a party. We were unaware of any commission case were proceedings had been commenced against the guarantor by the broker.

The Singapore arbitrators permitted this action and when the guarantors did not put in an appearance issued an award against them. We enforced that award in Hong Kong and our member got paid.

Indemnity claims

Looking now at our other role - providing liability cover.

Last year I discussed how “environmental liability” cases were becoming more common. Unfortunately, as we all know, legislators sometimes make ship agents liable for matters which have nothing to do with them and which they can’t prevent.

One small claim had both these elements.

Ship agents in Hong Kong acted for a Singapore based line. They received a summons regarding a “dark smoke emission”. The Shipping and Port ordinance provides that the “Owner, Master and Owners agent” each commit an offence.

The line responded by saying that the vessel had been chartered in and the member was being prosecuted as the owner’s agent. The agent was left to pursue the owner for an indemnity. The date of the hearing was fast approaching so ITIC applied pressure on the owners.

The owners P&I club eventually took up defending (pleading guilty as there was no defence) the member received what was a modest fine for a first offence and the owners' insurers paid.

During the rather hurried preparations the owners appointed lawyer was only interested in whether the member had previously been convicted as the level of fine increased (doubled) if they had been.

The member has now been convicted.

If it happens again could a different owner say "I'm only reimbursing the lower level amount as I shouldn't pay for your bad record".

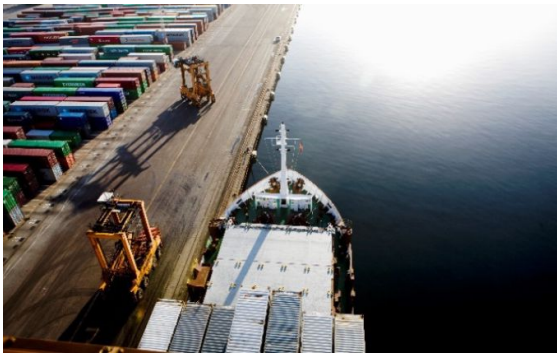
Unfortunately pleading guilty to environmental crimes can have unexpected consequences. Large corporations can have strict rules about doing business with companies with "criminal records". A little while ago we had a ship manager who along with their tanker owner agreed a plea bargain in the US to a MARPOL violation. They did so on purely economic grounds. The unexpected consequence was that an oil major blocked not only the owner's ships but every ship they managed.

They were then sued by their other clients who lost business.

Fraud continues to be a problem

A large claim involved an employee of a liner agent in Africa who had deliberately changed the release dates of a number of containers on the internal computer system in order to avoid the correct collection of demurrage charges.

The employee has disappeared so we can't ask him why - although he did drive off in a BMW!



Every year ITIC deals with claims that result from errors by agents dealing with **transhipment** cargo. The following two claims are typical examples of the things that can go wrong.

In one case no declaration was given to the authorities and in the other case the information given to the cargo interests was wrong.

An agent in Argentina failed to declare the cargo as transhipment cargo within 15 days of the vessel's arrival in Buenos Aires. This was a simple oversight in the agent's office. The obligation to make the declaration is strictly enforced and an automatic penalty of 1% of the value of the goods was immediately imposed. In this case the penalty was US$ 122,204. The agent who had failed to make the necessary declaration had to pay the sum the authorities demanded.

In the other case an agent in the Dominican Republic was involved in the transhipment of two containers that arrived from Cuba with a final destination of Haiti.

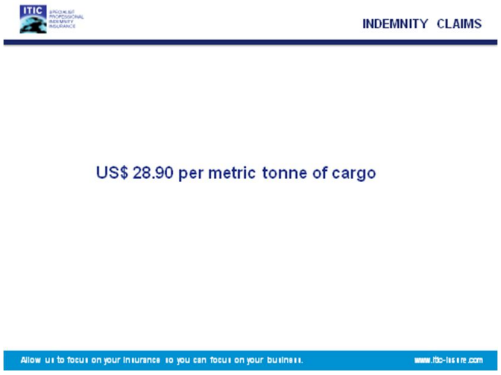
Under Dominican Customs Law, in common with many customs regimes, cargo awaiting re-exportation can only be held in storage without paying the relevant customs duties provided time limits and other regulations are complied with.

The agent kept in regular contact with the shipper who was waiting for some documentation to be provided by the consignee in Haiti. As time passed the agent obtained an extension of the time limit for storage of the containers. Unfortunately when reporting to the shipper the agent made a typographical error and the email read that the extension expired on the 26th January when it should have said the 6th January. The result was that the cargo was impounded by customs when the containers were not exported before the deadline. Ultimately a penalty of just over US$ 25,000 was settled by the agent.

I chose glasses for the next slide because another common cause of claims is people **misreading tariffs**

A South American port agent was asked by the owners of a vessel to provide a quote for the costs of discharging a shipment of project cargo.

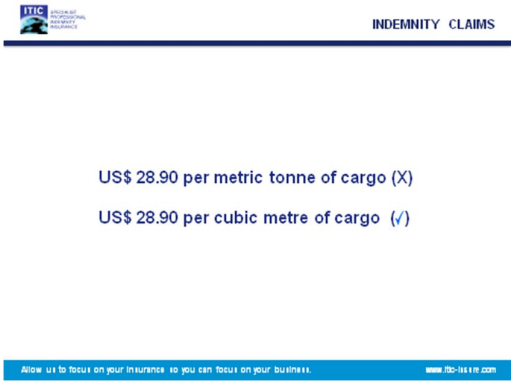
The agent reviewed the port authority's official tariffs, and advised the owners that the stevedoring costs would be US$ 28.90 per metric tonne of cargo.



The cargo weighed 296 metric tonnes, so the owners calculated the stevedoring costs at approximately US$ 8,500 and quoted that in turn to the charterers of the vessel. The voyage was fixed on that basis.

The cargo was discharged and the stevedores invoiced the agent US$ 130,000 - costs which were passed to the owners who questioned them.

The agent then realised that the US$ 28.90 rate that they had quoted to the owners was the rate per cubic metre, not per metric tonne.



The case was reported to ITIC who verified, via local correspondents, that the agent had simply misread the port tariff document.

The agent approached the stevedores who were willing to offer a discount on the costs, and ultimately the agent settled the claim for US$ 75,000, which was covered by ITIC.

In another recent case, ship agents in Australia quoted the incorrect port charges for a local port to their customer. Their customer then fixed on that basis and suffered a loss of AU$ 86,000. The claim against the agent was reimbursed by ITIC.

For ship brokers the case is sometimes that they don't read at all!

In tanker chartering many errors, especially on port costs, could be avoided by rechecking the relevant provisions of the Worldscale book.

We had a claim where the broker was acting for the owners of a vessel trading in the Mediterranean. When considering an offer from charterers, owners asked the broker for the weekend working times in Algeria.

The broker answered the owner's question "off the top of his head" and got the answer wrong. The broker advised that the weekend working times were 1700 Thursday to 0800 Saturday, when in fact, as set out in BIMCO's holiday calendar, the answer should have been 1700 Thursday to 0800 Sunday. A difference of 24 hours.

Enough on claims, now some updates on Shipbrokers Terms and Conditions

A number of our shipbroker members have been using terms and conditions. This has been something of a campaign for us and delegates may recall that we issued a suggested wording. We have since begun to see the benefit of members trading on a reasoned basis.

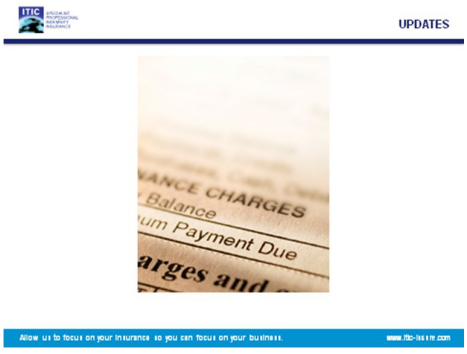
CYBER LIABILITY

The threat of cyber-attack has received considerable publicity recently and well-known companies have had their systems hacked. ITIC has been looking to offer practical and affordable protection for its members designed to cover the threats they face. We can now offer an add on to the members ITIC policy covering liabilities to third parties caused by the unauthorised use of their computer systems.

For example, hackers could use a liner agent's system to obtain the release of cargo which they then steal. In covering their tracks, the hackers might destroy all data relating to rates, container numbers and dates and places of loading. We are pleased with the uptake to date.

Last year's presentation ended with a trailer for a new development. As a mutual part of our remit is to see how we can protect our members. So here is this year's trailer:

Unpaid disbursements



We can't provide a credit insurance for every bad debt (well not economically anyway) but the current issue we are looking to address is how we can protect ship agents from being left with unexpected disbursements. These are costs which they couldn't have anticipated at the outset of the call and which they can't recover from the principal. For example: the extra costs such as towage when a vessel was scheduled to berth at one location but was subsequently told to shift to assist with cargo operations. Often these items lead to arguments as to who is responsible for them. Ultimately if the costs

couldn’t be recovered we would cover the agents. The idea is at an early stage so as they say “watch this space”. Thank you for listening and if there are any questions I would be happy to answer them.