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INTERNATIONAL TRANSPORT INTERMEDIARIES CLUB LTD

Risk management for ship agents
and shipbrokers

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FONASBA - Istanbul, 16th October, 2025

ITIC
IS MANAGED
BY **THOMAS
MILLER**

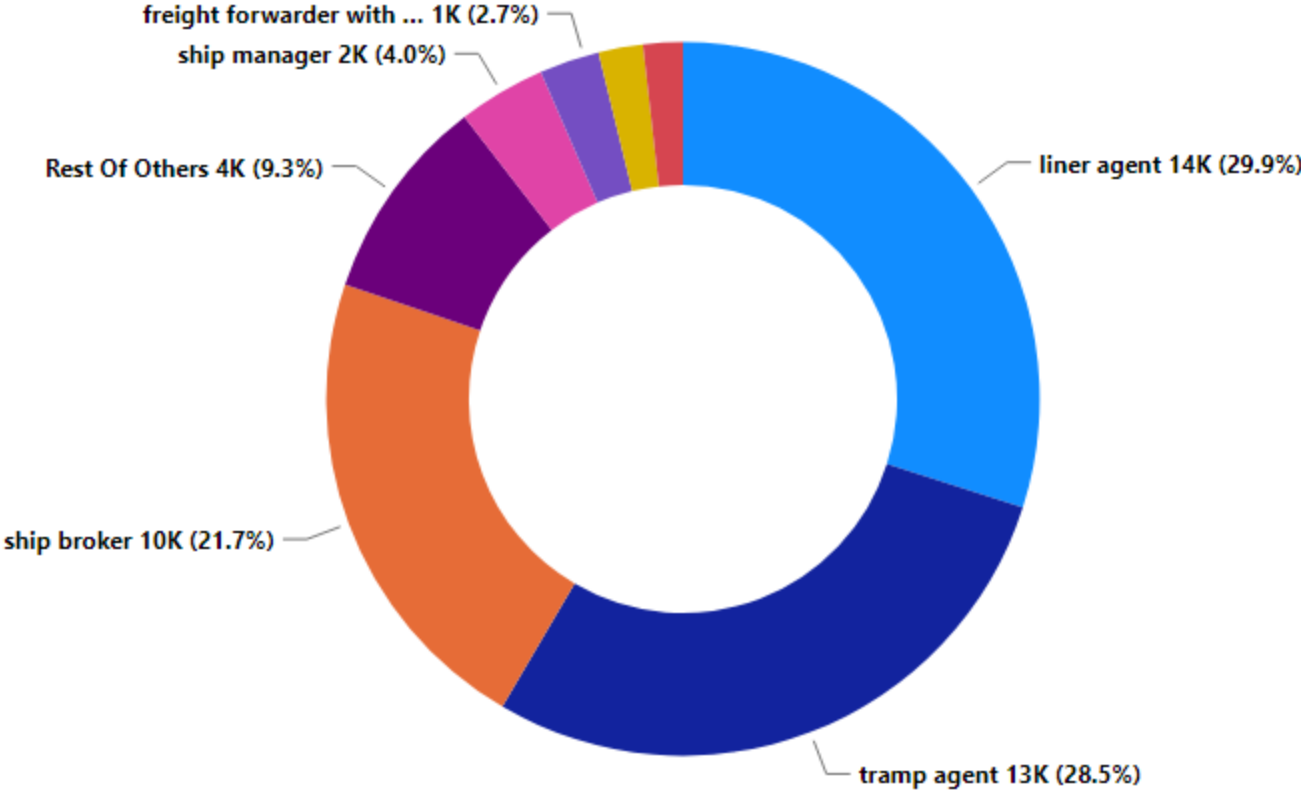




**3,700 members
in 120 countries**

- Over 46,000 claims handled since 1992
- US\$515m of claims notified (gross):
 - Indemnity claims US\$473m
 - Ship agents: US\$140m
 - Ship brokers: US\$90m
 - Ship managers: US\$74m
 - Debt collection claims US\$40m
- US\$260m recovered for members

Top 7 Claims By InsuredServices





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KNOW YOUR CLIENT/ / FRAUD/ SANCTIONS

- Key to avoiding financial, operational and legal pitfalls
- Establish identity of parties to a transaction
- Who will be paying your invoice? On what terms?
- Further checks required? E.g. sanctions, credit checks etc. – sanctions later
- Bank details





- Social engineering – still prevalent
- Cover for fraudulent acts of employees
- Ship agents – crew scams

- Legal position and practical position
- Different legal positions –EU / US / UK
- Extraterritorial impact of US sanctions
- The practical position – will you get paid?

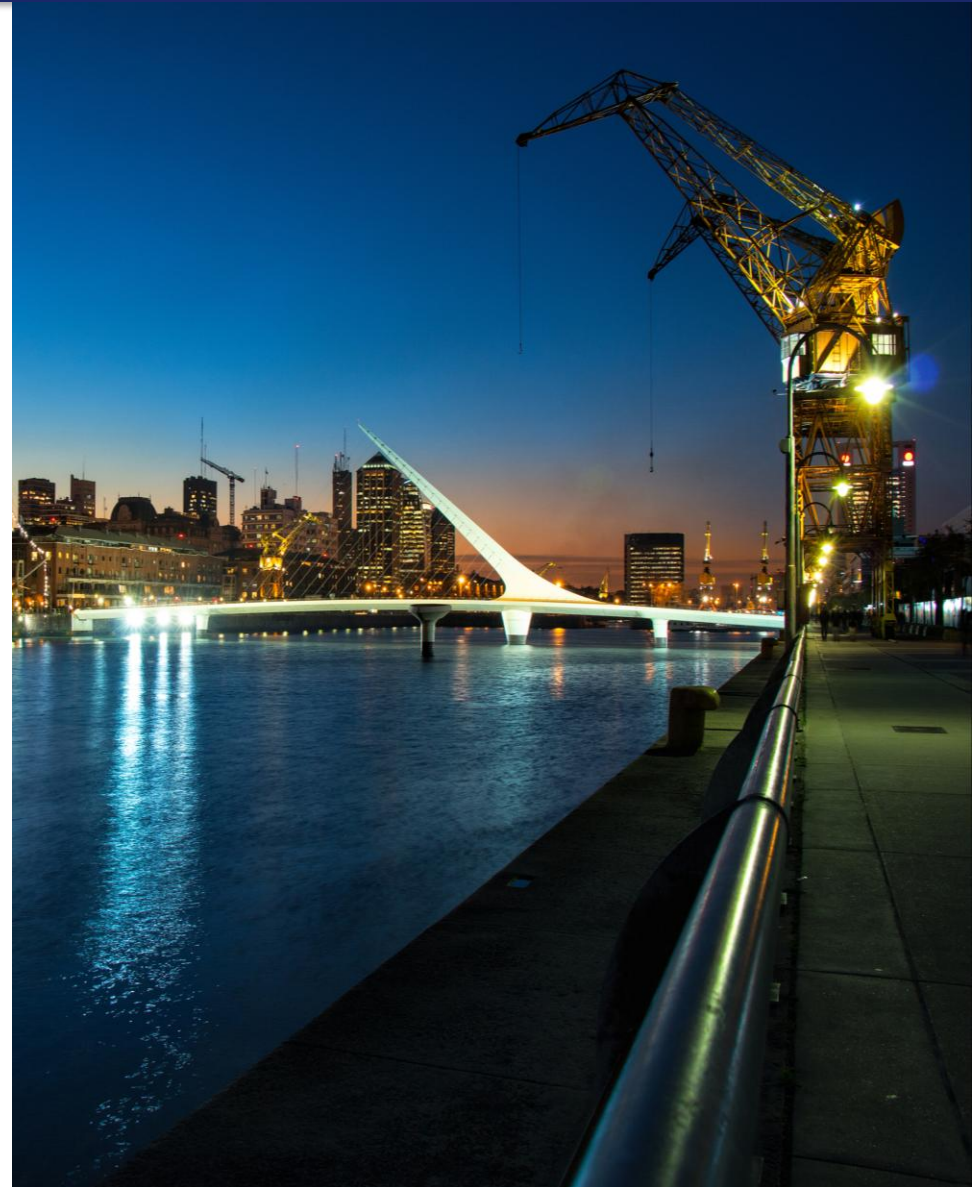




2. Negligent errors

- a. Bills of lading – drafting
- b. Bills of lading – release of cargo
- c. Failure to book berths
- d. Failure to book correct equipment
- e. Failure to book pilots
- f. Reliance on out-of-date information i.e. port draft level
- g. Providing incorrect costs information

3. Liabilities to authorities/ ports



1. Insured service?

2. Legal assessment

1) Duty

2) Breach

3) Causation

4) Damages

Scenario Work Shop 1 – delay in booking pilots

- STS transfer taking place
 - Agent acting for both owners
 - Ship agent on board one vessel to, amongst other issues “coordinate and hire” pilots
 - Allegedly fails to book pilot early enough due to alleged negligence in estimating the STS completion time incorrectly
 - Late pilot attendance results in delay of 24hrs to both vessels due to incoming cruise ship taking priority
 - Claim received from both Owners for demurrage / loss of hire
-
- What questions to ask?

Questions:

-1. Insured service?

- Is this work “ship agency”?
- Was the performance negligent?

-2. Liability

- Would the pilot have been available even if they had booked earlier?
- Would any other vessels have had priority in any event?

-3. Quantum

- Demurrage rate – is it reasonable? What is it? Evidence?
- CP between big trading company and themselves

Scenario Workshop 2 – failure to get extension for transshipment

- Ship agent fails to request an extension for transshipment
- As a result the goods are seized by authorities
- Authorities say they will auction them, but it's a lengthy process
- It's not really a cargo many people will want
- Cargo owners decides to abandon cargo and pursue the Carrier instead
- The Carrier simply pays the Cargo owners US\$500k
- A Claim from the Carrier for US\$ 500k is received.

- Should agent pay?

Additional facts:

-1.

- Agency contract
 - 35 year old Asian contract – with arbitration in Asia
 - But South American law likely applies

-2.

- Bill of Lading defences for Carrier
 - Time bar 1 year, no formal claim was ever made by Cargo Owner so it was probably time barred;
 - Limitation of liability: potentially capped at US\$ 12,500

-3.

- Members' only client
- Members says will go insolvent if they don't pay and they lose the client

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Scenario Workshop 3 – Broker time barred claim

- Sole broker (B) between Owner (O) and Charterer (C)
 - Demurrage claim received by B from O to pass on to C
 - Time bar 60 days in CP
 - O sends to B within 60 days
 - B sends to C after 60 days
 - C says the claim is now time barred and will not pay O
-
- Is B liable to either C or O?

Additional facts:

-1.

- O sent claim to B on Friday 2000 (day 57)
- Time bar expires Monday 2359 (day 60)

-2.

- B sends to C on Tuesday at 0930 (day 61)
- Meaning a 9.5 hours delay past time timebar

-3.

- C then says they will pay 50%
- B says (without ITIC approval) that they will pay the other 50%

Additional facts:

-4.

- Arbitration case precedent: B is agent of C, so not time-barred

-5.

- B says “commercial suicide” to raise such a defence

-6.

- Whilst discussions are ongoing, C goes into liquidation
- O asks B for 100% - is this a reasonable request?



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Thank you

Any questions?

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