

# FRAUD IN THE MARITIME INDUSTRY



Source: George Thomas

During the recent years, the shipping industry and maritime commerce has seen a sharp increase in not only the number of fraud cases, but also the variety of fraud. Fraudsters are becoming more and more ingenious in their design and execution of schemes, including the use of modern technology, such as computer hacking, but sometimes tried & tested “old school” methods, such as document fraud, work just as well.

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## INTRODUCTION

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Fraud in commerce is as ancient as commerce itself, with examples going back to the Roman world and before.

The International Maritime Bureau defined maritime fraud as:

*“An international trade transaction involves several parties – buyer, seller, shipowner, charterer, ship’s master or crew, insurer, banker broker or agent. Maritime fraud occurs when one of these parties succeeds, unjustly or illegally, in obtaining money or goods from another party to whom, on the face of it, he has undertaken specific trade, transport and financial obligations.”*

Maritime fraud is becoming more common due to a number of reasons: Criminals are increasingly turning to new methods such as computer hacking, ports are adopting new technologies that in the worst case can enable new types of fraud (such as automatise container operations) and as shipowners are under pressure to win new business, many have disregarded due diligence when dealing with new business partners.

As both the greater reliance on IT and electronic trading platforms and documents increases, so does the need to stay ahead of the game played by the Fraudsters. There is a “cost” of course, to greater security, both in terms of investing in better technology and processes, but also in potential business opportunities.

In order to achieve the right commercial balance it requires experience, skill as well as knowledge of what scams and schemes are out there.

Given that Shipping is a global business, with many players and jurisdictions involved in any single shipment of cargo, even a simple A >>> B voyage, there are a myriad of potential pitfalls where the unscrupulous seek to take advantage of the unprepared. As parties are often based in multiple jurisdictions, and necessarily deal with each other at “arm’s length” and / or through Brokers and Financial Institutions, there may be little or no opportunity to make “physical checks”.

Everything comes down to reliance on documents, most importantly the Bill of Lading, as a key facilitator to fast trade with a low transaction cost. That is also the inherent weakness, the trust in a key document that can be adulterated and issued in multiple originals, which is the root of many of the frauds being perpetrated today.

It may be “minor” cheating or a multi-million dollar scam, but being prepared is the key to avoiding both.

This article gives you an overview of different fraud types, examples of fraud cases Skuld has been involved with useful tools, such as checklists to support your loss prevention programme against fraud.

## TYPES OF FRAUD

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Fraud can come in many different ways, from many different angles. When we speak of “fraud” in the Maritime Industry, we do use it as an umbrella term that goes beyond strict legal definitions, but the meaning is clear : someone is seeking to take advantage of someone else in a way that goes beyond commercial sharp practice. The following is an overview of the kinds of fraud that may be experienced, but it is far from an exhaustive list.

### BUNKERING FRAUDS

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*Fuel can be the single greatest expense in the daily running cost of ships. Fuel prices rose over the last 10 years and never really fell significantly. Such values may provide a strong incentive for criminal designs to commit fraud, the*

*incidence of which is said to be on the increase. Commonly, disputes and alleged misdealing are in respect of:*

- a. quantity consumption by the vessel
- b. quantity of deliveries
- c. quality of deliveries

### **Case Scenario: Supplier overstated quantity supplied**

The Association has been involved in matters where disputes arose over the quantity supplied. At times several days after a supply was made. These issues can be difficult to resolve, as the passage of time makes it more difficult to conclusively determine where fault may be found.

In particular it appears possible by the use of pumping air into bunkers as well as heating them to increase their volume and create what has been called “the Cappuccino” effect.

Experienced Engineers will be able to closely monitor a fuel supply and check for visible and physical signs of possible problems, including monitoring the temperature of the supply as well as checking for signs of air supply.

#### ***Lesson learned:***

It is important to properly prepare for and monitor the supply of fuel oil to the vessel and not downgrade its operational significance. Experienced crew, assisted by a Bunker Surveyor, can significantly assist in the mitigation of this risk scenario. A mass flow meter on board the receiving vessel can also assist to determine exact quantities supplied, as mass measurement may be more accurate than volume.

### **Case Scenario: Bunkers are adulterated and off specification**

Disputes over bunker quality are not uncommon, and often related the precise specifications, ignition quality, viscosity or other important factors.

Beyond those quality issues which simply make a Chief Engineer’s life more difficult than usual, are those which potentially can cause significant if not catastrophic damage to a vessel’s engines.

Bunker fuel is a heavy fuel oil product, resulting from the refinery process of crude oil and it contains a great many chemical and metal traces. Ship engines are designed to deal with these, but unusual or excessive concentrations may cause problems.

Furthermore the Association is aware of cases where bunker supplies were co-mingled with waste oils originating from a number of sources, including waste car oils and vegetable oils from the restaurant industry.

#### ***Lesson Learned:***

Wherever possible new bunkers should be pumped into empty tanks on board the vessel and not co-mingled with existing stores. These bunkers should not be used until tests are performed to determine the exact nature of the supply. For claim purposes, bunker manifold samples on the receiving vessel can have the best evidential value if taken and stored properly.

### **Case Scenario: Crew colluded with Bunker Supplier to short change on a supply of fuel**

A Chief Engineer on board a Tanker vessel was sentenced to a fine and imprisonment after being found guilty of having colluded with a Bunker Supplier to steal over 100 tons of fuel oil which was sold on to another vessel. The C/E had been induced into this course of conduct with a bribe, a small % of the value of the fuel, from the Supplier. The fraud was detected as the concerned authorities were aware of the general risk and had been monitoring possible suspicious activity which ultimately allowed for all the Conspirators to be caught.

#### ***Lesson learned:***

Even relatively modest sums of money can be sufficient to entice people to commit a fraud. Given the key place bunkers hold in the vessel’s operational cost, careful voyage monitoring as well as on and off hire surveys, and bunker supply surveys are important in mitigating this risk. Ensuring rigorous staff training and company mandated codes of conduct are also important in this regard.

## **Case Scenario: Vessel is invited to conduct illegal bunkering off a West African Nation**

Vessels trading to, from, or in the area of West Africa may be contacted by parties seeking to facilitate the supply of cheap bunkers outside of regular and established bunkering spots.

The potential fraud is the possible facilitation of the sale and purchase of stolen or smuggled bunkers and the avoidance of customs duties and other taxes which would have been due on the supply of the bunkers had they been procured properly.

This particular scenario comes with the added risk that vessel's enticed to meet one of these alleged bunkering opportunities, may in fact be lured into an ambush designed to facilitate a piracy & kidnapping attack on the vessel. Security Contractors Dryad Maritime assisted the Association in highlighting these risks in the following Web Advisory to Members:

<http://www.skuld.com/topics/voyage--port-risks/piracy/gulf-of-guinea/piracy-and-bunkering-risks-in-the-gulf-of-guinea/>

Even without the risk of a pirate ambush, such transactions are likely to fall foul of numerous laws as well as contractual agreements.

If the vessel sells part of the cargo, then that would be theft and outright criminal conduct. It may also amount to smuggling. Buying cargo, or particularly bunkers, may amount to smuggling and customs evasion.

In any of these scenarios the vessel is at risk of detention, possible confiscation, and the crew may be subject to arrest and criminal prosecution.

A variation of this scenario may see the vessel inadvertently take cargo originating from a country that is subject to sanctions, and which cargo may have been co-mingled or transited via repeat STS through a 3rd party jurisdiction.

### ***Lesson Learned :***

A deal that looks too good, probably is. The best way to ensure vessels stay both physically and legally safe is to ensure that they do not engage in activities which come with a high degree of suspicious circumstance, significant economic inducement or believed advantage, as well as other Red Flags (which are explained further below in the Loss Prevention Section).

## **CARGO AND DOCUMENT FRAUDS**

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These frauds can come in many different forms. It can involve the sale of cargoes that do not exist, fraudulent misrepresentations on Cargo Documents, the attempt to illegally claim on Letters of Credit, fake Letters of Indemnity, as well theft of cargo and / or cheating over quantity and quality.

### **Case Scenario: Forged Bills of Lading with the intention of stealing the cargo**

The Fraudsters create a fake set of Bills of Lading that looks sufficiently genuine against which they seek to take delivery of the cargo in advance of the genuine Receiver.

This fraud may have received some "Insider" assistance, as the Fraudsters will need key information – if not a copy of the genuine Bill – in order to ensure they can achieve delivery at the discharge Port.

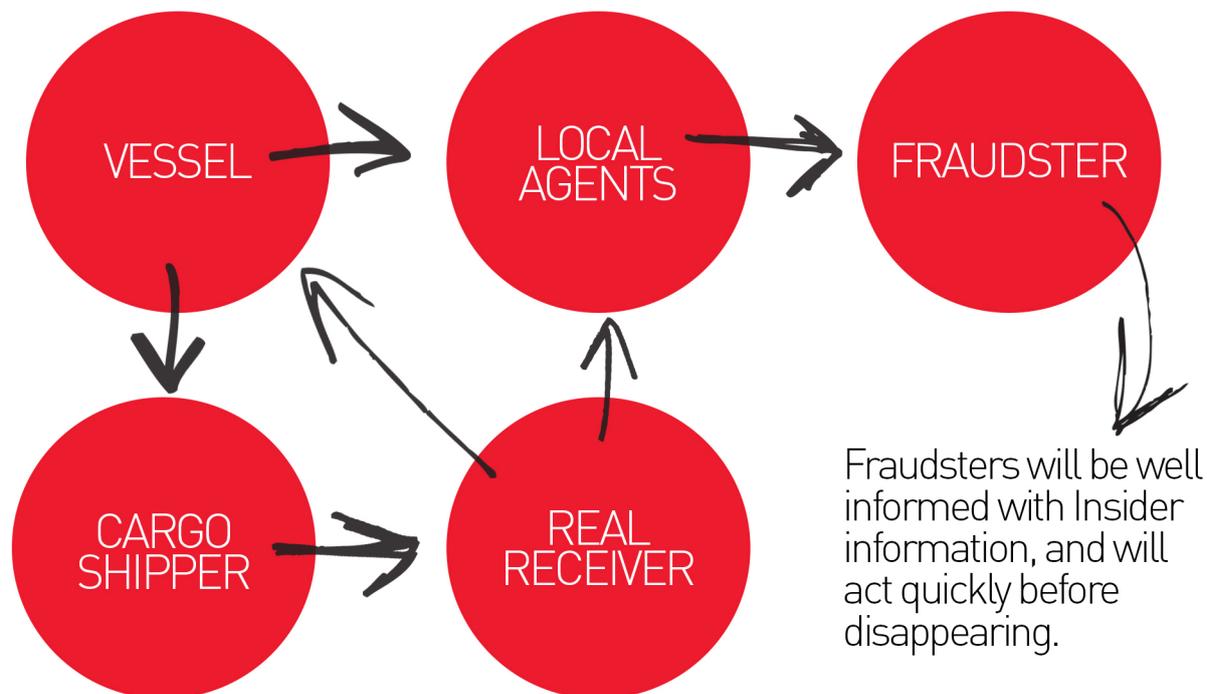
The Ship-owner and genuine Receiver (or unpaid Shipper) are then left to fight it out as to whose Insurers will have to cover the loss, or worse who will have to take the direct hit (as some loss scenarios may not be covered by standard insurance).

### ***Lesson Learned:***

Ensuring that there is always a clear chain of custody for any set of original Bills is very important. Local Shipping

Agents, if they want to avoid being held liable, will also have to ensure that they conduct proper checks against documents presented to ensure their genuine nature. If in doubt, a phone call can help to clear up many issues and concerns. If, however, serious concerns persist (such as clear errors or inconsistencies on documents) then calling a “halt” to operations will be a prudent step to take.

## PORT AND AGENTS ARE DUPED BY THE FAKE BILLS INTO RELEASING CARGO



### Case Scenario: “Fake Cargo Sale” – a parallel transaction

The Fraudsters will seek to create genuine looking Bills of Lading or other Cargo Documents, copying corporate styles and logos, and going as far as including genuine ship and shipment details. The Fraudsters appear to be well informed about the particular type of cargo being shipped.

In one particular case, the Fraudsters knew of the exact trading pattern of a Member’s vessel and were able to give credible details of her route and alleged cargo, so as to make the transaction appear legitimate. They offered to sell a cargo that allegedly was on board, but the vessel was in fact trading a different cargo altogether that had been sold already to genuine buyers from genuine sellers.

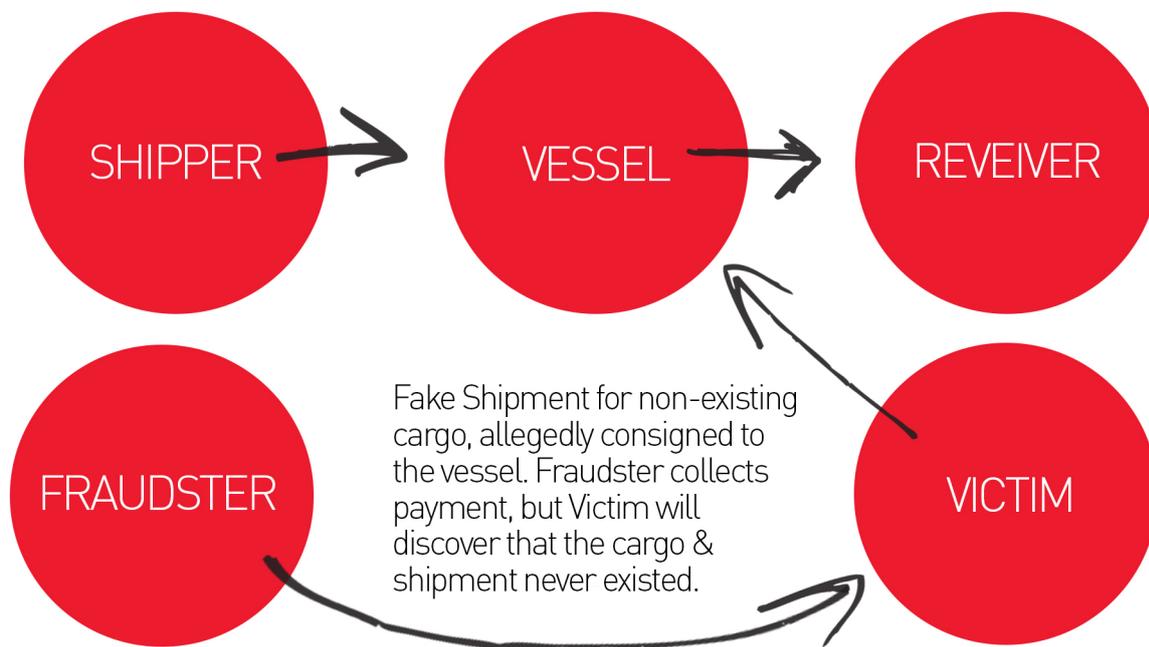
The Fraudsters seek to gain by seeking a Buyer for their alleged cargo and then either obtaining payment direct or by way of a Letter of Credit opened in their favour as part of the transaction.

In some cases involving the Container Industry, the Fraudsters go so far as to create fake websites, and give fake tracking numbers, to give the appearance of a genuine shipment that can be tracked “live”.

#### Lesson Learned :

Fraudsters can take significant steps to create a legitimate appearance for their scheme. cursory or brief checks may be insufficient to detect the underlying scam. Unless dealing with known and proven counterparties (who confirm the deal back) extra caution should be taken to ensure a particular proposed offer is in fact genuine.

One particular Red Flag to this type of Fraud is that the offered cargo may be at a significant discount to prevailing market prices, and aiming at trapping a Buyer with a deal that is “too good to pass on”.



### Case Scenario: a sub-Charterer or Freight Forwarder issues / re-issues Bills of Lading with cargo miss-descriptions

The Master of the vessel has the responsibility and right to issue Bills of Lading for the cargo laden on his ship. In practice this is often delegated / contracted out to Charterers and their Shipping Agents on the basis that any Bills issued must conform with Mate’s Receipts issued during the loading operation.

It is important to ensure that Bills do accurately reflect the cargo laden, because a knowing miss-declaration, for instance claiming that a cargo of cars is “new” while they are fitted with old engines, is a fraud. The 3rd Party Buyer of the cargo expects new cars, not refurbished vehicles, and he is paying the price for new cars.

Once the true nature of the cargo is discovered the Buyer will usually be able to take action for his loss against the Vessel, and there will be no defence where clean Bills were issued for unclean cargo.

This can create problems for ship-owners where the Bills are issued, or perhaps re-issued, by a Party several steps removed in the contractual chain, and these Bills contain clearly inaccurate information. The Owner may not even know that this event has occurred, until confronted with a cargo claim at the discharge Port.

Typically the “fraud” will involve:

1. a deliberate over statement as to quantity laden
2. a knowing miss-description of the cargo laden
3. the post or ante dating of the Bill of Lading

This is done in order to ensure documents pass as “clean” through the Banking system, obtain more sale proceeds, and put the transaction into sale and Letter of Credit “windows”. In all cases, however, misinformation is used to obtain financial benefit, or greater financial benefit, than should have been due had accurate information been provided.

#### Lesson learned:

Delegating an important right / obligation such as issuing cargo documents should only be done to trusted counterparties and in line with clear indemnities and counter-obligations to protect the Owner. If a cargo is laden that

clearly is not “new” or “clean” then extra care has to be taken that any cargo document issued very precisely describes the exact nature of the cargo.

### **Case Scenario: the “Trojan” Container**

The Containerization of global trade has given incredible benefits to shipping and the world economy, yet has also given rise to numerous opportunities for fraud.

The “Trojan” Container is the one that is alleged to contain a certain specific cargo, yet upon discharge it turns out that the contents are quite different. The types of incidents the Association has seen include:

1. Cargo of plastic shipped for recycling contained a small amount of used diapers
2. Cargo of rolls of textiles contained smuggled cigarettes
3. A 40 foot box contained 21 illegal immigrants + 2 People Smugglers from Fujian consigned to Los Angeles
4. Various methods to hide drugs
5. Waste and rubbish, or other redundant material to give the impression of [x] tons weight, but the real goods were never shipped (but were paid for)

These are just a few examples, but often the carrier is at risk of fines, criminal charges, rejection of the cargo, detention, disposal and extra carriage costs.

#### ***Lesson Learned:***

The volume of containerization as well as the need for fast processing leaves little time to ensure that cargo manifests are checked rigorously and even then physical contents are not routinely checked against the manifest by the vessel (that would be a logistical and practical impossibility in the trade).

A great degree of reliance is therefore placed on Freight Forwarders to ensure that both contents and weight are properly declared. In case of concern, it is better to isolate a box and have it inspected, even leaving it behind, rather than risk a vessel with thousands of boxes on board being detained for alleged immigration, customs and other legal infringements at the discharge Port.

## **CHARTERING FRAUDS**

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The key here is usually the involvement of unknown or numerous intermediaries and an overly trusting approach to representations made by or on behalf of first time counterparties.

### **Case Study 1: the “Double Play” Charterparty**

Time Charterer A (TCA) let out the vessel to Voyage Charterer B (VCB). The deal was fixed through TCA’s Broker (BB1) and VCB’s Broker (BB2).

The fixture was for a cargo from Asia to Africa. Cargo was laden, Bills of Lading were issued and freight became due. TCA sent the freight invoice to VCB.

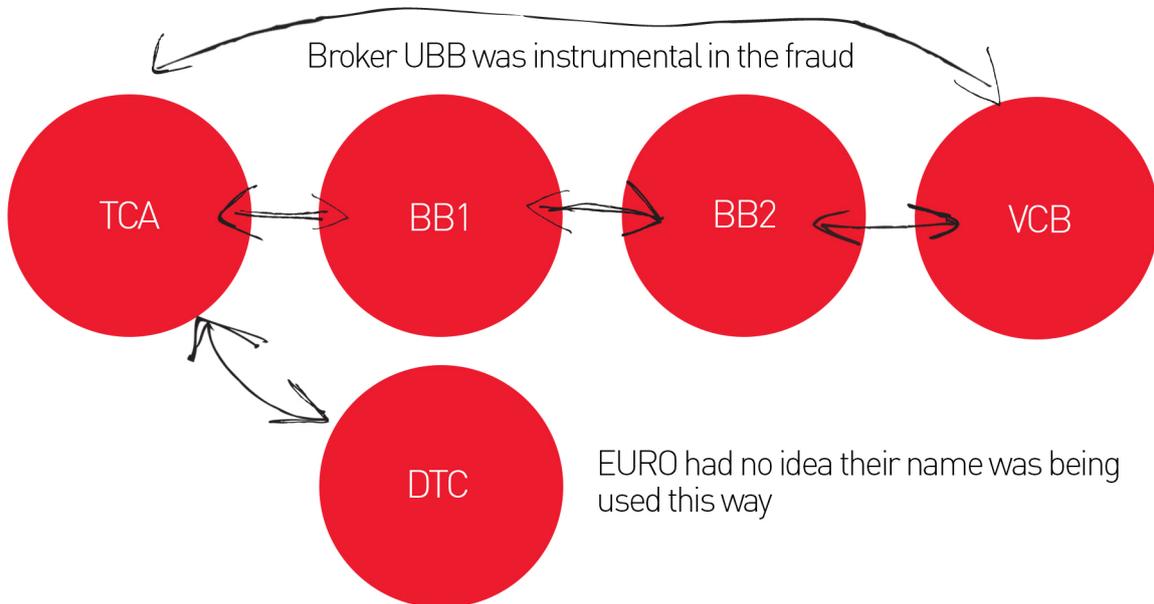
VCB responded by stating the following:

- VCB had paid the freight to a different Time Charterer “DTC”
- That was subject to a fixture concluded by BB2 on behalf of VCB and DTC
- VCB denied having any contract with TCA
- VCB refused to pay freight to TCA

The Receiver in Africa, and the particular jurisdiction concerned meant that it would be difficult to successfully exercise a lien on the cargo. In the meantime both DTC and BB2 disappear from the scene.

Due to an error in the issued Bill of Lading it was possible to halt the documents in the Banking system before they reached the Receivers. As a result a deal was arranged between TCA and the Receivers for a commercial resolution as both parties were innocent.

Investigations revealed that the offer from BB2 had come from a particular "IP" (Internet Protocol) address, which was also the source of a number of other suspect fixture offers received in this time frame.



**Lessons learned:**

contact with unknown Intermediaries acting for unknown principals can be high risk without rigorous due diligence and counterparty checks.

**Case Study 2: Advance Fee Fraud**

*This style of Fraud is famous as the Nigerian 419 or "Spanish Prisoner" scam and has been around for hundreds of years.*

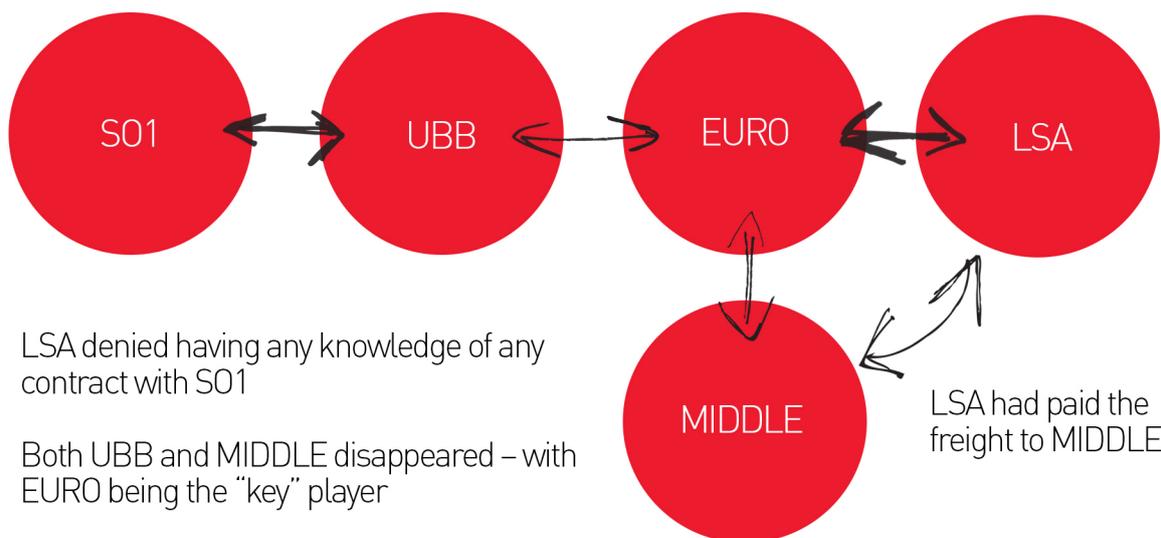
Ship Owner "SO1" is offered a cargo lift from a country that recently had been subject to sanctions. The fixture offer came from an unknown Broker ("UBB") for one TCT / Liner Terms hybrid.

The Broker alleged he represented a major European Company that was the TCT Charterer ("EURO").

A request was made for Port Charges to be paid in advance of the vessel's arrival, but because of "sanctions" these could not be paid to the local Shipping Agent ("LSA"), but instead should be routed via EURO's subsidiary in the Middle East ("MIDDLE").

The funds were remitted, but checks made thereafter showed that:

- This particular cargo did not exist and was not usually traded from this country
- The purported Shipping Agent did not exist
- There were no relevant sanctions on the country
- The money sent to MIDDLE was routed onwards to an entity in Northern Cyprus after which the trail went cold
- The alleged Broker and the alleged Charterer EURO were run by the same person out of different email and phone accounts
- This person showed a high degree of shipping experience and understanding of fixtures



**Lesson Learned:**

Lesson learned : the transaction came with many red flags, including an unknown intermediary, an alleged sanction issue, a request for an advance payment as well as a request for routing funds via a 3rd party and country. All of these should have led to further inquiry.

A phone call to the actual European Company, well known, whose name was being abused could have prevented the Ship-Owner falling foul of this scheme.

**Case Study 3: Intercepted Freight Scam**

Time Charterer A (“TCA”) is introduced to a fixture by their usual Broker (“UBB”), they had in turn been approached by an Eastern European Broker (“EEB”), who was merely passing on a proposal from a Central European Broker (“CEB”).

The proposed Voyage Charterer (“PVC”) was a very reputable and known Trader in Europe, and the fixture proposal gave full contact details of PVC’s genuine office and staff.

At no stage was any attempt made to contact PVC direct.

TCA concluded the fixture via the chain of 3 Brokers, and freight was invoiced subsequently for just over USD 1 million.

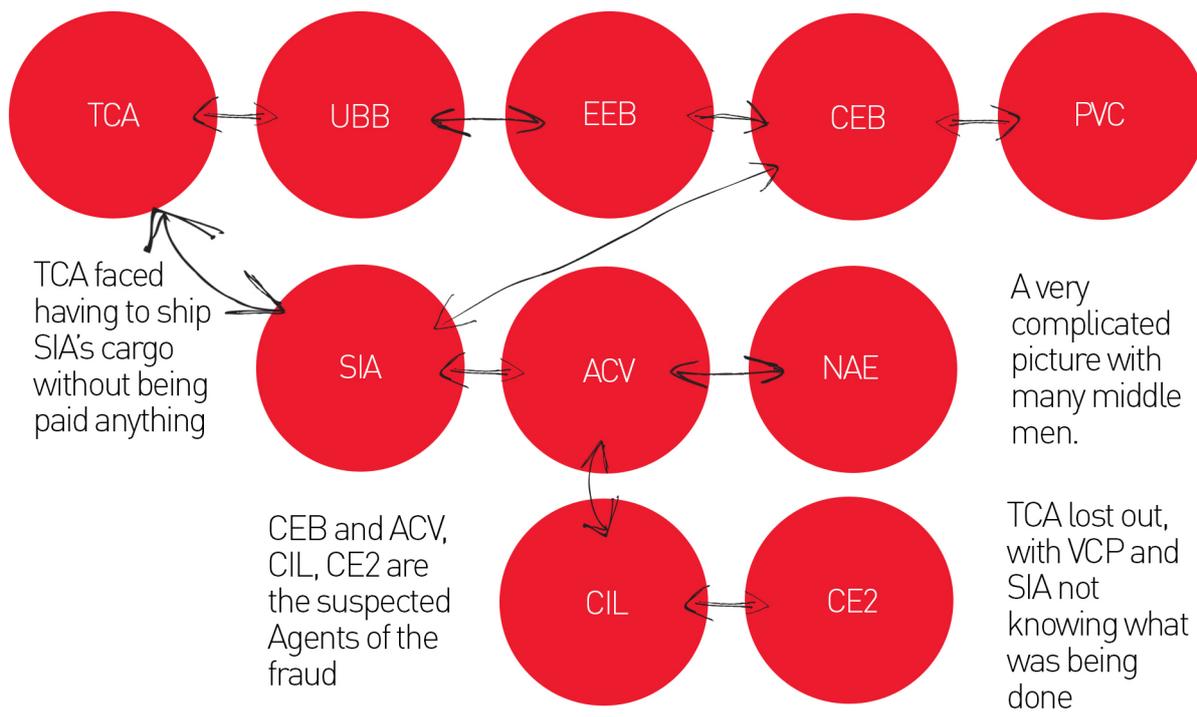
In the meantime the Fraudsters used another company vehicle (“ACV”) to make a deal with the Shippers in Asia (“SIA”) for the actual shipment of the cargo, all the while holding out that their principal was PVC. The deal was very competitively priced so as to make the Asian Shipper SIA conclude the deal with undue haste and no due diligence.

The shipment took place and as per the fixture deal, Freight Prepaid Bills were issued and released. Due to an oversight by TCA, they did not chase for the freight until some considerable time had passed.

In the meantime ACV routed the funds received from SIA on to a 3rd party, after which the trail goes cold. When challenged for the freight, ACV alleged that they believed to be in business with different Charterers all together (not TCA or PVC) and claimed they paid their freight legitimately to the 3rd Party Disponent Owners they contracted with (allegedly a North Asian Based Entity “NAE”).

In any event, it turns out that ACV used a company in London to make this payment (“CIL”). Investigations revealed that while payments originated from CIL, no such company could be found in London, and the payment did not go to NAE, but instead to a company in Eastern Europe (“CE2”) and possibly onwards thereafter.

Ultimately the fraudulent design and set up of this complicated scheme was traced back to the 3rd Broker in the chain, namely CEB who used frequently changing mobile phone numbers, email and Skype accounts. Addresses given turned out to be fake.



**Lesson Learned:**

A long chain of intermediaries, who do not know each other, meant that the ultimate victim: TCA lost their freight and the complexity of the scheme meant it was not possible to track down either the responsible parties or the funds. A simple due diligence call to PVC would have revealed the truth.

**Case Scenario: "I never planned to pay you anyway ..."**

The difficult shipping market has seen Ship-Owners take business opportunities whenever they present themselves, because with tough times comes the need to keep the cash flow going. That means it may not always be possible to conduct careful due diligence in advance of a fixture, and deals may be made with unproven counterparties.

Unfortunately that has seen unscrupulous companies acting in the Charterer capacity take vessels on hire, and either pay only first hire and bunkers – but at times not even do that, because they allege they need to collect the freight first before they can pay the Owner.

Once the Bills are issued, however, and the freight is paid by the Shippers, the Charterer then disappears from the scene, leaving the Owner with no revenue but a cargo that still has to be delivered under issued Bills. Given that freight was paid, it may now also not be possible to successfully lien the cargo to obtain payment.

**Lesson learned:**

Extending credit, by not ensuring prompt payment of hire and bunkers, as well as not undertaking due diligence before fixing can leave Owners exposed to the unscrupulous actions of those seeking to take advantage of the tough market conditions. Where possible "freight pre-paid" Bills should be avoided, especially if the freight has not in fact been pre-paid.

**PORT RELATED FRAUDS**

In some parts of the world, Vessels are at risk of Fraudsters seeking to use a vessel's call to Port as an opportunity to obtain payment for services and goods that were never provided.

## Case Scenario: Fake Agency Invoice

### *Type A*

In this scam, Fraudsters can come armed with invoices for alleged Shipping Agent related activities and / or supplies to the vessel which were never performed or delivered. They will present themselves as a local Shipping Agency that undertook work on behalf of the vessel and Master.

The fake invoices can, however, come looking very official and even bear the signature and chop of the vessel's Master which would indicate that the Fraudsters obtained access to genuine shipping documents related to the vessel's call and then copied the same on to their fake invoices.

Typically modest sums are involved, for apparently routine types of supplies and services, and they are presented sometime after the vessel has left. Failures to pay may be followed up with threats of blacklisting at the particular port, legal action, arrest of the vessel on her next visit and similar pressure tactics.

### **Lesson learned:**

Billing Departments in Shipping Companies need to be alive to this sort of fraud and be ready to carefully check any alleged service or provision of stores against the record of the Operation Department for the vessel's call at a particular Port. A phone call to the actual local Shipping Agent can also quickly reveal whether an invoice originates from a genuine source or not.

### *Type B*

In this variation, which is another example of advance fee fraud, the Fraudsters hold themselves out to be local Shipping Agents offering supplies and services for a genuine upcoming call at Port. They may contact the Master direct and make offers that are likely at attractive discounts to what the usual going rate would be at the Port. Advance payments are sought, but once made the Fraudsters disappear from the scene and no services or supplies will actually be rendered or delivered.

### **Lesson learned:**

It is important to ensure that business is conducted with known or verified counterparties, and the P&I Club's local Correspondents can often assist in confirming whether a particular local party is a known and established service provider or whether there are concerns.

## BLACKMAIL FRAUDS

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*This crime is not new at all, but modern technology makes it very simple to perpetrate, yet very difficult to track down the guilty parties.*

*The attack and effect is against a Victim's fear of reputational loss, and a desire to "not be in the spotlight".*

### Case Scenario: Blacklisting Fraud

The Association assisted a Ship Manager faced with a web based blackmail attempt. The Fraudsters had set up a website, purporting to be quasi-official, and based on reports that "aggrieved" Seafarers would make about a particular Shipowner or Manager.

The Website would then list the victim company as a "Blacklisted" company, and would advise that being on this "Blacklist" would mean that the company would be investigated by authorities and barred from doing business with Governments and high profile Corporate entities.

The offered "solution", was to make a payment for an "investigation" into the underlying complaint made against the victim Company, and should that "investigation" exonerate the Company, then its name would be removed from the Blacklist.

All of this was found to be fake and not genuine, but unfortunately for the targeted company, their name would come up

when google searched along with the word “blacklist”.

The answer was to contact law enforcement in the country which hosted the IP address, make an official complaint and then with the threat of legal action force the IP provider to take down the website.

**Lesson Learned:**

Fraudsters will avail themselves of any opportunity that modern technology may provide to assist with their criminal designs. Constant vigilance, and understanding of modern media and IT, plus the willingness to “follow through” are essential to combat such attempts at fraud.

## CYBER FRAUD

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*This is a rapidly developing area of risk for all companies across all Industries. The key to successful fraud is having enough convincing information and knowledge to make the target believe that a transaction is genuine. Information theft is therefore a key element in fraud, and Cyber-attacks can facilitate the wholesale theft of vast amounts of confidential information.*

Recent Examples:

- a well reported attempt by Drug Traffickers to exploit – with IT - the automation of container terminals to facilitate their criminal activities
- the risk of vessel AIS data being corrupted or altered to facilitate fraud related to a vessel’s movement or trade or indeed to hide her after a successful hijacking
- intercepting and monitoring of communications to and from Shipping Agents to exploit information and perpetrate a whole range of frauds and other crimes from cargo related matters to smuggling activities
- a recent attempt by Hackers to divert freight and other payments to a shipping company by circulating genuine looking invoices seeking to channel 3rd party payments to new banking details

**Lesson Learned:**

Every company, big or small, needs to monitor its IT risk profile and ensure that it takes necessary steps to protect itself from cyber attacks, especially those opportunistic attacks that seek to exploit unprotected systems.

## FAKE JOB FRAUD

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Unfortunately fraud is perpetrated even against individual Seafarers, often coming from developing nations, who may find it difficult to detect fraud or do anything about it when it happens.

### Case Scenario: Fake Job Adverts

This is a regrettably simple fraud, made depressingly easy by the use of modern technology.

Fraudsters create Fake Websites and Employment Agencies that promise jobs to Seafarers, and these may come with alleged connections to major Shipping Companies and Technical Managers.

Against the payment of a fee, variously called “Administration”, “Facilitation” or “Search” fees, or other such designations, the Fraudsters allege that they will find a job opportunity for the crewman.

After the money is paid, and despite many attempts to track down the alleged Agent, the crewman is often left with neither the promised job nor a refund of his payment.

It is worth noting that under the recently enforced Maritime Labour Convention 2006, crewmen are not meant to be charged a placement fee by Manning Agents, but it appears that this practice continues in some places.

**Lesson Learned:**

Educating crew as to how the recruitment process is meant to work can assist them in avoiding falling in to this risk. Good Manning Agents and Ship-managers are actively involved in helping crewmen know their rights and how the process is supposed to work properly for the benefit of both sides.

## INFORMATION PHISING

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*The Association will repeatedly advise that one of the key elements to fraud is information. Fraudsters will seek to “phish” information from various sources, and it is known that in some Ports the Criminal Element actively targets Shipping Agents as sources of information.*

### **Case Scenario: Fake Emails purporting to originate from the Suez Canal Authority**

The Association highlighted this risk to Members in a web bulletin earlier last year, following an alert issued by the Marshall Islands Registry :

<http://www.skuld.com/topics/voyage--port-risks/port-news/africa/e-mails-purporting-to-come-from-the-suez-canal-authority/>

These attempts may subject vessels to great risks (see the Case Scenario in relation to West African Bunkering).

The risks may range from attempted monetary frauds to the risk of attack, theft and hijacking of vessels and crew.

#### **Lesson Learned:**

Ensuring that proper procedures are in place that determine how and when key information is shared with 3rd parties is essential to protecting the safety of the Crew, Vessel and Ship-owner. Sensitive information should only be shared with known and reliable 3rd parties. When in doubt, undertaking counter checks and prudent management of information can help to mitigate risks.

## FRAUD - LEGAL OVERVIEW

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Fraud can have legal consequences in both civil and criminal courts. For instance an attempt to make a fraudulent insurance claim can allow the Insurer to deny the claim while at the same time expose the Claimant to the risk of being prosecuted in the criminal courts for their attempt to defraud the Insurer.

Equally a fraudulent transaction, say by use of fake Bills of Lading and / or Letters of Credit, can attract both civil action by the victim to recover their loss as well as criminal proceedings brought by national bodies such as the Serious Fraud Office in England or the Department of Justice in the United States.

The standard of proof (under English Law) in a criminal case is of course much higher: “beyond reasonable doubt”: than the test in the civil courts, which decide cases on “a balance of probabilities”.

Yet when fraud is alleged in a civil case then Courts may expect proof that is commensurate with the seriousness of the charge laid (see Mr. Justice Aitken in *The Milasan* (2000)) and this can make legal action complicated, difficult and expensive: that is assuming the Fraudster can be traced and has assets against which a recovery action can be taken.

Under English Law, the modern criminal statement as to what is fraud is found in the Fraud Act 2006, and it provides that:

#### “Section 1 Fraud

1. A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).
2. The sections are:
  - a. section 2 (fraud by false representation),
  - b. section 3 (fraud by failing to disclose information), and
  - c. section 4 (fraud by abuse of position).

3. A person who is guilty of fraud is liable
  - a. on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
  - b. on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).”

In Maritime cases, it is section 2 that most often would apply, as usually it is stranger to the victim who makes a false representation for the purposes of the fraud.

Given that English Law is still a thorough mixture of common and statutory law as well as equity, however, there are more causes of action under which an aggrieved person may seek redress, especially for civil recovery actions, including:

- a. Deceit
- b. Conspiracy
- c. Breach of Fiduciary Duty
- d. Breach of Trust
- e. Conversion
- f. Misrepresentation (Misrepresentation Act 1967)
- g. Restitution
- h. Contract

While, as mentioned, the standard of proof will be higher than in other civil law disputes, the advantages of pleading fraud can be significant if the case merits it :

- lifting the corporate veil (not normally possible in commercial disputes)
- overriding limitation and / or exclusion clauses
- Judges will allow a greater degree of recoverable damages and assessment of the loss

While the law therefore provides for remedies if a party suspects they have been the victim of fraud, it would be beyond the scope of this article to undertake a full exposition of the law and law practice.

As such it is always advisable to seek expert legal assistance before making an allegation of fraud or considering legal action that is based on such an allegation. This is because, aside from the legal and factual complexity of fraud cases, an accusation of fraud is very serious.

If found to have been made carelessly, and without firm basis, it can lead to a counter suit for defamation from the accused party.

## LOSS PREVENTION

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The key to preventing being a victim of fraud is vigilance. Being alive to the risks, taking due care to prepare and then ensuring diligent follow up, will mitigate against the worst and helps to ensure that business reputations and profits are protected.

The following are a number of general guidelines for preparing an organization and its employees from a “big picture” point of view, as well as giving guidance on specific transactional “red flags” which should cause a company to pause for further investigation and clarification before proceedings with a transaction.

Lastly there is advice on what to do when a fraudulent activity is suspected to have taken place or may still be live & on-going.

## THE BIG PICTURE

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First and foremost is the need to educate the entire company about being alive to the risk of fraud. This must be an initiative that comes with clear support and guidance from the Top Management.

Well prepared companies are at much lower risk of being victims of fraud, and are able to effectively protect both their reputation and profits.

Complacency is the Fraudster's greatest ally when looking for a new target to make a play on, but given the results from Kroll's most recent Global Fraud Report, as well as recent Industry news, the risk of "Insiders" being involved must be treated with equal seriousness.

The cost of being a victim may include:

- i. Direct Financial loss
- ii. Reputational loss
- iii. Lost Business Opportunities
- iv. Investment of time and resources to deal with a problem / litigation

Persistent and enduring vigilance are required, because the Fraudsters will seek to come up with ever new methods and plays to achieve their criminal designs.

Mitigating the risk of fraud is all about focusing on the weak areas and taking reasonable prudent steps to minimize the risk of being the victim of a scam. Steps to take include:

1. Educate the company from top to bottom about the risks, the company's policy and expectations
2. Ensure there is visible and unequivocal Management support for a pro-active stance
3. Have a clear set of internal mandatory rules and guidelines for staff to follow, these should cover:
  - a. How staff should assess, monitor and handle the risk of fraud as part of their duties
  - b. A clear code of conduct for staff to follow to avoid the company being at risk of straying into possible gray zones
  - c. Safe custody of sensitive information
  - d. Staff engaging in transactional or accounting activities need further specific training
4. A designated Company Officer should:
  - a. Monitor the education process
  - b. Check staff compliance with the guidelines
  - c. Identify areas of potential risk and develop appropriate strategies and guidelines to address these
  - d. Conduct internal audits to ward against an "Insider" fraud
5. Have clear guidelines as to what is considered to be "suspicious" and ensure simple and quick reporting procedures
6. Provide an anonymous reporting mechanism in place so that employees, suppliers and customers can – if they wish – make a report in confidence
7. Have a clear procedure as to how to deal with a suspected fraud situation
8. Determine in advance what possible resources may be needed in case a fraud situation arises
9. Have clear guidelines on how to dispose of old and / or cancelled documentation, sensitive documents should never just be "thrown away", but may need to be shredded or subject to further destructive methods

10. Digital copies of documents and / or digital databases need to be kept secure;
11. A strong IT policy is needed to cover:
  - a. Internal communication
  - b. External communication
  - c. Custody of digital records and databases
  - d. On-line security policies
12. Ensure that Suppliers and Vendors are thoroughly checked and confirmed, these checks should be repeated periodically
13. Conduct due diligence for every new counterparty
14. Employ robust 3rd party screening for both internal audits as well as counterparty checks
15. Have an unequivocal company culture, lead from the top, against fraud, corruption, bribery and other activities which may be illegal and / or unlawful

## SPECIFIC RED FLAGS (CHECKLISTS)

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### Counterparty Issues

- Identities of unknown or new Brokers and Principals could not be verified independently
- Supposedly separate entities share postal addresses and / or there are other contact detail inconsistencies
- Counterparty or Intermediary's activities are being undertaken away from the place / jurisdiction where their registered address places them
- Excessive pressure or aggressive behavior in pushing for a deal combined with a willingness to overlook or waive "discrepancies"
- Avoidance to questions requiring clear answers

### Documentary Issues

- The proposed trade and the proposed shipping and finance documents are inconsistent
- Incomplete cargo documents or information thereon is inconsistent with the usual terms of the trade
- Documents with alterations outside of normal trade practice
- Post or Ante dated Cargo Documents
- Documents contain errors or otherwise have suspect validity

### Transaction Issues

- The proposed transaction is highly undervalued or provides for an unusual profit margin
- The trade is unusual in terms of its nature or geography
- Payment is to be made / received in cash
- Numerous Intermediaries are involved, more than usual in any event
- Requests for unexplained payments
- Overly complex transaction(s)
- Routing of funds via 3rd parties or countries
- Unexplained changes to transaction details

## WHAT TO DO IF FRAUD IS SUSPECTED

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This can prove to be a hair raising experience as suddenly the risk emerges of a significant financial and / or reputational loss. A pro-active and focused approach will help to avoid a problem turning into a crisis.

**Key “Do(s)” include:**

1. respond fast
2. form a response team consisting of senior staff
3. consider retaining outside expertise, especially if a significant or high value situation is at hand
4. ensure discretion and confidentiality
5. deploy the company’s procedure for an investigation
6. secure evidence
7. have a clear communication plan
8. retain legal counsel if appropriate
9. put a clear plan in to effect, which has a clear goal

**Equally there are some key “Don’t(s)” to avoid:**

1. lose, “temper with” or destroy evidence
2. make any announcements or communicate with 3rd parties before ascertaining facts and developing a response plan
3. start internal or external discussions before it is clear who can be trusted
4. comment in the media, also social media
5. jump to conclusions, instead focus on known and verified the facts without withholding information

## NOTABLE SHIPPING AND TRADE CASES

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1. Trafigura Beheer BV vs. Mediterranean Shipping Co Sa “The MSC Amsterdam” (2005): fake Bill of Lading Fraud
2. STX Pan Ocean Co Ltd vs. Bowen Basin Coal Group Pty Ltd and Thomson (2010): possible fake Letter of Indemnity
3. Etablissement Esefka International Anstalt vs. Central Bank of Nigeria (1979) : fraudulent misrepresentation on a Bill of Lading
4. The Saudi Crown (1986): fraudulent misrepresentation as to shipment date
5. Uzinterimpex JSC vs. Standard Bank Plc (2008): it can be difficult, if not impossible, to successfully recover funds from another party, especially if the company vehicle used is allowed to go bankrupt over recourse action
6. Standard Chartered Bank vs. Pakistan National Shipping Corp (No. 2) (2000): if fraud can be proven, in this case in relation to Bills of Lading with false information, then the Courts will assist the Claimant even where outright dishonest intent may not be present on the part of the other side
7. Brown Jenkinson & Co Ltd vs. Percy Dalton (London) Ltd (1957): the Master / Ship-owner will be liable if they issue / permit the issue of false Bills, whether or not they take a Letter of Indemnity from the party making the request, and may not be able to enforce such Lol
8. MV Alina II (2013): the Charterers sought to overturn an arrest of bunkers in South Africa, but failed due to the key documentary evidence being rejected as false by the Court
9. Brownsville Holdings Ltd. Vs. Adamjee Insurance Co. Ltd. “The Milasan” (2000): insurance claim failed following a finding of deliberate scuttling

## CREDITS

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**BY: CHRISTIAN OTT**  
**VICE PRESIDENT HEAD OF CLAIMS, SINGAPORE SYNDICATE**  
**LOSS PREVENTION AND RECURRING CLAIMS TEAM LEADER**

With contributions from:

**Per Zerman**  
Vice President and Lawyer  
Skuld Copenhagen

**Valerie Baert-Marquard**  
Senior Claims Executive  
Skuld Copenhagen

**Annette Munck Nielsen**  
Claims Assistant  
Skuld Copenhagen

**Simone Elisabeth Vitzthum**  
Claims Executive  
Skuld Oslo

**Niklas T. Sonnenschein**  
Claims Executive  
Skuld Oslo

**Ingrid Reithe Frium**  
Senior Executive  
Information and Knowledge Management  
Skuld Oslo

**With thanks to:**  
Kate Docton and Paul Barfield at Hill Dickinson, Singapore

**Research Material:**

"Fraud: does the punishment fit the crime?" and "Fraudulent Insurance Claims" by Rhys Clift at Hill Dickinson, London

"An introduction to commercial fraud", by Clive Freedman QC and Chris Quinn of Littlejohn Chambers

"Maritime Fraud & Piracy" 2nd Edition 2010, by Paul Todd

"Global Fraud Report 2013 / 2014" Kroll

"MV Alina II" 2013 Case Note, Jeremy Prain of Bowman Gilfillan

Further Sources:  
International Maritime Bureau / International Chamber of Commerce  
Dryad Maritime and Marshal Islands Registry