

To the Athens Correspondence Group

30th July 2004

Commenting on Lloyd Watkins' reply of 22nd July '04, representing the International Group of P&I Clubs' views on Passenger Liabilities arising from Terrorism

Dear Sirs,

After consideration, the International Group now rejects Option C on practical grounds and instead suggests that carriers be absolved from all liabilities arising from terrorism absolutely.

I have sympathy with this suggestion on moral grounds and, on balance, I agree with the practical issues raised.

Moral Issues

The first line of defence against terrorism must be governments' intelligence agencies, backed by policing authorities. Reports on 9/11 and WMD have revealed major failings by the US and UK intelligence agencies, the CIA and FBI in particular. The second line of defence for shipping must be the security procedures at the ports, supported by the coast guard. Ships' own security systems must be the last line of defence. However it is proposed that passengers' rights of direct action should, in the first instance, be against the ship, or carrier. Is this not akin to a football team making their goal keeper take all the blame for any defeat?

Practical Issues

On the practical issues Lloyd Watkins is mainly correct. The majority of shipowners insure War Risks directly with commercial underwriters, extending the insurance to include War P&I covering liabilities arising from war and terrorism. Such a War policy is limited to the insured value of the ship. The P&I clubs providing an additional \$400 million in excess of the War Risks insured value. This raises two issues:

1. The combined War P&I limits insured - insured hull value plus \$400 million - are insufficient for passenger ships carrying more than 1,000 passengers, and
2. The P&I clubs cannot be expected to guarantee the performance of other insurers.

War Clubs

However, what has not been mentioned are the War Clubs, operated separately but alongside the P&I clubs by the same club managers.

The War Clubs provide \$500 million of cover, irrespective of the ship's value, extendable to include War P&I cover. The combination of an entry in a War Club plus its sister P&I club's \$400 million excess gives a maximum War P&I cover limit of \$900 million.

Many cruise ships are entered in War Clubs to get the benefit of this extra cover and, in these situations, there can be no reason for club managers not to arrange guarantees on the combined performance of two separate mutual clubs under their management. Also, I see no reason why all passenger ships should not use a War Club under the same management as their P&I club.

There is therefore a maximum of \$900 million War P&I cover currently available in the insurance markets that could be guaranteed. A sum that is incidentally just sufficient to meet the new LLMC '96 limit on a 3,500 passenger ship but insufficient to meet a compulsory insurance limit of SDRs 250,000 on ships carrying more than 2,500 passengers.

Conclusions

In my previous comments, dated 12th July '04, I recommended the adoption of Option C, under which it is proposed that ISPS certification would absolve carriers from all terrorism liabilities. However, Lloyd Watkins' suggestion of an absolute exclusion on all terrorism liabilities, including the effects of bio-chemical weapons, is no more than a more finite derivative of Option C.

If IMO's primary objective is to provide ship passengers with a more acceptable level of guaranteed compensation from the predominant causes of marine casualties as soon as possible, preferably before the next major casualty, then all liabilities arising from terrorism and bio-chemical weapons will have to be excluded from the compulsory insurance. In my opinion, it would also be more equitable to extend these exclusions to carriers' liabilities as well.

Yours sincerely

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