

To The Athens Correspondence Group

11th October 2004

Availability of financial security in respect of the Athens Convention, 2002

Comments from Graham Barnes of BankServe Insurance Services Ltd on the report to the Legal Committee on the work of the correspondence group and the summary letter to the correspondence group, submitted by Professor Erik Roseag of Norway.

The two outstanding issues on which no consensus has yet been reached are the **amount issue** and the **war risk issue**, specifically the war liability (protection and indemnity) issue.

Amount Issue

The **amount issue** for compulsory insurance is already met by the Protection and Indemnity clubs under the clubs' existing cover limit which is wholly supported by their US\$2billion reinsured limit, excess of US\$50million. However, cover for liabilities arising from war, including terrorism, are excluded with only modest liability cover from bio-chemical weapons.

Although the amount issue for maritime risks is met under club rules, the P&I clubs nevertheless face difficulties making guarantees because of the following:

1. Loss of all policy defences to the limit guaranteed, and
2. Within the reinsured limit, the clubs must allow for the potential liabilities for crew, pollution, collision and removal of wreck which could aggregate to an amount that exceeds the limit reinsured under International Group's reinsurance programme causing an unprecedented Overspill Claim payable by all members of the International Group clubs.
3. As a result of 2 above, the P&I clubs face strong resistance from their members not operating or owning passenger vessels, being around 95% of the total.

The suggestion of lowering the compulsory insurance limit to that of the LLMC 1996, on an interim basis, would greatly assist the clubs and reduce the costs to carriers. Should this suggestion not be favoured there are, in my opinion, means by which the P&I clubs can both meet the amount issue and contend with the objections of the majority of their members; provided all liabilities arising from war, terrorism and bio-chemical risks are excluded absolutely.

War Risk Issue

The **war risk issue** cannot be met by the clubs, or any primary insurer, without the availability of adequate excess reinsurance. War Risks reinsurance cannot be guaranteed on two counts:

- The seven day notice of cancellation and automatic cover termination provisions, and
- Insufficient capacity to meet the amount required.

War risks insurance is underwritten on the basis of a modest deposit premium for all geographical areas except the areas specifically excluded. Cover for these excluded areas can only be reinstated by underwriters' endorsement, often requiring the payment of additional premium. Furthermore, underwriters will retain the right to serve notice, at anytime, to exclude cover in areas considered to have become a higher risk and cancel cover absolutely for areas considered uninsurable. Automatic

cancellation applies in the extreme scenarios of war between any of the five major powers and any hostile detonation of a nuclear or atomic weapon of war.

Although War Risks cover limits can probably be increased closer to the levels of the War Clubs, the reinsurance will always be subject the seven days cancellation notice and automatic termination provisions.

Conclusions

War risks insurance and reinsurance, including the associated terrorism risks, are not insurance policies that can be guaranteed to the amount required, even under the pooling system of the P&I clubs in the International Group. Comments from Lloyd Watkins suggest that the inclusion of War Risks with the CLC guarantee may have been an oversight and could be reconsidered.

Intransigence on the war risk issue will render the Athens Protocol 2002 inoperable with governments being lobbied not to ratify. All efforts to remedy the current unacceptable levels of compensation to passengers arising from the predominant maritime risks will fail yet again due to an inability to recognise the flexibility required in underwriting a risk that has, to date, barely featured in the passenger casualty lists.

Perhaps the recent collision of the cruise ship "Van Gogh" with a tanker off Gibraltar, putting the lives of 492 passengers at risk, is a timely reminder that accidents happen suddenly and unexpectedly.

Recommendations

In his summary letter to the correspondence group, Professor Erik Roseag recommends under Strategy III some flexibility on financial security with regard to the more remote risk of terrorism. I believe this is the only solution that will enable speedy ratification of the Athens Protocol 2002 and implementation. However, flexibility on financial security should extent to acceptance of guarantees from each carrier, since I do not believe a pooling by state of certification is either practical or equitable.

Carriers are responsible for keeping their ships out of areas which are excluded under their War Risks cover, or must negotiate with War Risks underwriters for possible extension of cover in an area that becomes excluded. Carriers will still be uninsured in the event of any automatic termination of war cover but this might be considered sufficiently remote, or in the circumstances impractical to pursue, to be acceptable.

The advantage of this solution will be simplicity. A guarantee from the P&I club, in the form of a club certificate, or a blue card, for all liabilities excluding war and terrorism and a guarantee from each carrier in respect of risks excluded by the P&I club.

If the LLMC '96 limit was also accepted then it would be even simpler with each ship having a fixed limit to be insured and guaranteed, being the number of passengers the ship was either able or licensed to carry.

Yours sincerely



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