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Dear Erik,

Athens

A number of discussions have taken place since your letter of 27th October, not least the co-ordination meeting in Brussels on 18th November and the meeting of the Assembly on 21st November. For our part, we have discussed the position with other industry organizations and also took part in a meeting of insurance interests called by the UK Department for Transport in November. Certain proposals have emerged from these discussions and I shall attempt to outline these below. However, you raised certain specific points in your letter and these should be addressed first.

In relation to the second paragraph of paragraph 2, you have not set out the basis on which various brokers and underwriters suggested that cover of $1billion is available. I suspect that most of them had in mind some involvement of Club cover.

In relation to the point you make in the third paragraph of paragraph 2, I should emphasize that the information from IUMI was provided by its Secretary General, Fritz Stabinger, who had suggested for the sake of convenience that this information should be provided in our response. I believe that he had already mentioned this to you some days earlier.

In relation to LLMC, it was certainly not our intention to make a 'massive attack on the LLMC'. The discussions at the Legal Committee and the Diplomatic Conference indicated, in our view, that States did not wish to see the broad jurisdiction provisions of the Athens Protocol limited in any way, which we saw as an inevitable consequence of employing LLMC. Our second point also involved what we understood to be the objections of States rather than ourselves, namely that there was no support in general for providing a lower limit by utilizing the relevant provisions of LLMC. We did not relish the prospect of putting this possibility before Boards only to have it rejected by States whose position remained that it was unacceptable as a matter of principle. We

understand that the co-ordination meeting on 28th November at least made it clear that States were not prepared to support any proposal based on a global limit under LLMC.

These points are of course relatively minor, but I thought it would be worthwhile setting the record straight.

Turning to issues of substance, it would be worth recalling that at the Assembly meeting, the delegation of the USA correctly pointed out that the Resolution would not be effective to modify the Convention. The confused discussion that followed did little to clarify the purpose of the reservations that were to be considered by the next meeting of the Legal Committee. However, these will have to be considered in detail well in advance of the April meeting since it is likely that if the Legal Committee cannot complete its work soon then the EU Commission will be inclined to intervene. The content of the proposed reservations therefore have to be considered in detail.

1. The first point to be made is that it will not be sufficient to deal only with certification in the reservation clause. It is now common ground that in certain jurisdictions the insurer's liability under Article 4bis would continue regardless of the content of the certificate. It is therefore necessary to deal substantively with liability issues in the reservation.

2. The second issue is the content of the reservation with regard to liability. You have suggested that any exclusion should be cast in terms of whether or not cover was available so that liability should be provided only to the extent of available insurance. This formulation is logical of course but may not be simple to operate. Thus, while we support the notion in principle, we have concerns about this being workable in practice. If, for example, your wording in paragraph 4 were adopted there could be endless litigation on the question of market conditions at the time of issue of the certificate. These difficulties could be avoided if a global sum was agreed as the limit of liability in respect of terrorism etc. It was suggested by the underwriters present at the UK Department for Transport meeting in November that despite the fragility of the war risks market it was possible to estimate that $400million capacity would be available in respect of war risks over the insurance cycle. It is suggested that the figure of SDR 250 million could be taken as the appropriate limit of liability in respect of terrorism.

3. If this is acceptable, the next question is how the limit in respect of terrorism should be applied. The policy objective identified by states has been that the victim should be able to avail himself of whatever cover may be available. This object will have been achieved if the carrier is made liable to the extent of his sustainable insurance cover. Furthermore shipowners will know that their liability in respect of terrorism reflects the insurance which is available to them.

4. Should the limit in respect of terrorism also be applied to the insurer? For reasons which we explain below we would suggest that this need not follow. If the Athens Convention applies then the shipowner is obliged to have a certificate of financial responsibility in respect of his general liabilities under the Convention. It is

inconceivable that a shipowner would not take out P&I War Risks cover, if trading internationally. Therefore he will already have cover in place up to the suggested limit. If, on the other hand, insurers are required to provide certificates then the implementation of the Convention will meet severe obstacles. The structure of the War Risks cover has already been explained in the FAQs which we circulated some weeks ago. We have not received any feedback on the FAQs but will of course be happy to provide any further information. It will be recalled that the cover is arranged in two layers and involves many different underwriters. As a consequence, many parties would have to agree before a certificate could be issued, making the operation of the Convention almost impossible. Moreover, as we have explained above, the certificate would add nothing since the shipowner would invariably purchase War Risk cover. The absence of a Certificate which extends to terrorist liabilities does not negate the fact that carriers will in practice have whatever war risks cover which the market can offer. For this reason we would suggest that the carrier's liability in respect of terrorism be restricted to SDR 250 million and that insurer's liability in respect of terrorism be excluded.

5. Since the bio-chem exception applies in the War Risk market as well as the Marine market a general exclusion in respect of bio-chem should also be included in the reservation clauses.

6. What you have dubbed the 'not entry into force clause' should also be included.

These points are taken up in the draft text put forward in the attached further opinion from Vaughan Lowe who was asked to develop ideas discussed at the meeting with the UK Department for Transport in November, at which he was present. As he has explained, it is necessary to make provision for the inability of the insurance market to provide even $400m. cover, and this has been done by requiring notice to be given to IMO. If that event were to occur then neither carriers or insurers would be liable. This suggestion is made on the assumption that cover can be provided on an annual basis and will not be subject to seven day notice of cancellation. However, further enquiry is being made in the market on this point. In the meantime it also has to be acknowledged that as a matter of domestic policy it may be difficult for administrations to provide that liability may cease or be reduced if insurance is withdrawn.

If the market is unable to provide cover on this basis it is submitted that it would be unreasonable to impose liability on shipowners in respect of incidents that occur when suspension of cover has been invoked. It would help perhaps if a concrete example could be given: if three major terrorist incidents involving cruise ships had occurred in different locations in the world at the same time, it would be reasonable for War Risk underwriters to cancel cover. In these circumstances it would seem distinctly unreasonable to impose a potentially crippling liability on a shipowner who may have committed a relatively minor infringement in his security arrangements but was otherwise blameless.

We shall revert as soon as the position is clearer but in view of the difficulties outlined above the Correspondence Group may wish to give further consideration to the first option in Vaughan Lowe's Note.

On the general question of cover and capacity I can report that all Club Boards have begun consideration of this issue. An Agenda Note was circulated in common form in September and has already been considered by several Club Boards. It was envisaged that this consideration would take place in two stages, the second of which will take place in the first months of 2006. We would hope therefore to be in a position to provide a report on this issue well in advance of the next meeting of the Legal Committee.

I am sending copy of this letter to ICS, IUMI and market underwriters in London for information.

If it would be helpful for us to meet you and other members of the Correspondence Group to explore these proposals further then of course I will be happy to arrange this.

Yours sincerely,

D.J.L. Watkins

c.c. Ms. L. Howlett ICS
Mr. F. Stabinger IUMI
Mr. D. Croom-Johnson
Mr. R. Atkin
Mr. A. Nunn