American move fuels ‘clubs’ fear

The American Club’s refusal to pay asbestos claims has stirred up the cartel.

Jim Mulrenan
London

Concerned about recent developments at the American Club have led the International Group to set up a working party to examine the potential implications.

Several clubs in the International Group protection-and-indemnity (P&I) cartel are uneasy about the American Club’s move to walk away from pre-1989 asbestos claims because they fear it could strike at the foundations of the relationship between shipowners, clubs and claimants. The P&I clubs insure their shipowner members, rather than seafarers, passengers or other third parties, operating a “pay to be paid” rule that effectively asserts that they are indemnity rather than accident insurers.

But small clubs have a tradition of being less legalistic in their approach to death and personal injury claims than the large clubs. They would be open to arguing that the “pay to be paid” rule conflicts with the principle that there should be no restriction on the ability of the P&I system to pay asbestos claims.

A landmark ruling by the House of Lords, the English supreme court, in the further of the Fanti and Pedra Island in 1990 upheld the “pay to be paid” principle but Lord Lord Goff indicated that at the time that if the clubs wanted to preserve this rule they should not abuse it in relation to personal injury claims.

The claims the American Club wants to reject are subject to US rather than English law but other clubs are nevertheless apprehensive about potential damage to the P&I system’s reputation.

The working group aims to report to the International Group within a matter of weeks, so it will have to take a view on the American Club’s plans long before the legitimacy of the bid to reject liability for old asbestos claims is determined by New York judge Lewis Kaplan.

A further concern of the clubs is that although there is no joint-and-several liability for claims between the various P&I mutuals, there is such co-responsibility between those who employed a seafarer over the years he was exposed to asbestos, yielding much the same result.

American Club executive Joe Hughes gave a brief rundown of the club’s plans at a recent International Group meeting but, according to other clubs’ managers, he was weak on specifics such as the extent of the asbestos liabilities that triggered the move to deny cover.

The action, however, suggests these liabilities must be large and, financially, the American Club is one of the more vulnerable clubs.

It has recently been forced to make a $25m cash call on its shipowner members and has problems with a new computer system that has delayed publication of the club’s annual accounts.

Hughes tells TradeWinds that the accounts are currently with the auditors and should be available within a couple of weeks. He declines to reveal the precise unaudited figures but says the result, after taking credit for the uncollected supplementary calls, will be in excess of $30m. It will show a financial year deficit but a policy year surplus, he adds.

Hughes insists the failure to file accounts, the decision to walk away from old asbestos claims and the cash calls are “completely, utterly and wholly unconnected”.

The American Club chief nonetheless “concedes the synchronicity of the emergence of these events into the public domain has been somewhat unfortunate and may have stimulated a febrile response in certain quarters”.

If the American Club is refused a declaratory judgment and a fall-back plan of reopening the closed underwriting years also proves impractical, Hughes says that “it won’t be the end of the world.”

“What happens happens. We will deal with this if we have to,” he added.

Even though the American Club directors have been cited in recent litigation, the club is still adding to its shipowner board.

The latest recruits are Victor Restis of Enterprises Shipping & Trading, Vassilios Bacolitsas of Sea Pioneer Shipping and Keith Denholm of Pacific Carriers.

HAZARDOUS IMPLICATIONS: The American Club’s refusal to pay asbestos injury claims has other major mutuals concerned.

Photo: Henry Lintott

Course restricts Silversea’s $47m loss claim to $5m

Silversea Cruises has failed in a bid to win more than $47m in compensation for loss of business suffered following the 9/11 terror attacks nearly three years ago. A London appeal court has upheld an earlier ruling that the up-market Florida-based cruise line is entitled to only $5m under a loss of hire policy that included cover for war risks.

The company says it is considering whether or not to appeal.

Silversea had already offered $5m by Norwegian marine underwriter Gard when it decided to meet a legal challenge to the settlement. It sued the Scandinavian IF insurance group, which at the time provided capital backing for Gard’s hull account, although the business is now fully owned by the Norwegian protection-and-indemnity club.

Silversea’s bookings were severely hit by the reaction of passengers to the attacks and to government warnings about the terrorist threat. One ship, the Silver Wind, was laid up as a result.

Lord Justice Ward, Mummery and Rix go to great length in analysing the insurance policy in their 2,400-word ruling but come to the conclusion that the case was correctly decided at the original trial.

One of the key areas of dispute was whether a $5m limit of cover constituted a fleet or a ship limit. The High Court judge at the original trial, Justice Tomlinson, decided it was a ship limit. The insurance policy provided a per- diem rate of between $60,000 and $185,000 per ship for Silversea’s four-vessel fleet. There was also a maximum sum insured of between $8.2m and $15.3m per ship.

If there had been a maximum pay-out for all four ships, the total would be more than $47m. It was this amount that Silversea claimed. But one of the clauses of the policy said that there was an annual aggregate of $5m for loss of income.

The Silversea fleet is comprised of the 17,000-gt Silver Cloud and Silver Wind (built 1994 and 1995) as well as the 26,000-gt Silver Shadow and Silver Whisper (built 2000 and 2001).

ON THE WATCH

Background: ISPS wording may unlock terror cover

A new security code may provide the answer to a standoff between governments and protection-and-indemnity (P&I) clubs over politically unpalatable wording created by a revised Athens Convention.

The International Ship & Port Security (ISPS) code could be the fix necessary to overcome the P&I clubs’ reluctance to provide the terrorism cover for cruiseships or ferries required under a protocol to the Athens Convention.

The protocol was signed at a diplomatic conference in late 2002 but the clubs are concerned about two key issues: the lack of any exclusion for terrorist attacks on a cruise ship or ferry and the limitation of liability of SDR 400,000 ($583,000) per person, or a total of about $1.75bn for every vessel or ferry.

Various solutions have been proposed including redrafting the protocol or setting up government-backed compensation pools but these are not seen as realistic.

However, with a little creative thinking, ISPS could be the mechanism for resolving the standoff as long as the wording of the protocol only makes the clubs’ exclusion and by extension the P&I clubs liable, if a loss is “wholly caused” by terrorism.

The idea is that if a shipowner has fully complied with two key ISPS and an attack still happens, it will not be “wholly caused” by terrorism but be partly down to the failure of a government or port to fulfill its obligations under the code.

A correspondence group of maritime administrators, lawyers and insurers is to explore the possibility at the next meeting of the IMO legal committee.

Pelling and Gray head to Miller

Experienced protection-and-indemnity (P&I) specialist Paul Pelling is quitting broking to become an underwriter with the US Club.

Pelling, 42, has been a P&I broker for more than 20 years and headed the teams at both Sedgwick and Willis before joining HSBC in 2000.

Pelling is to be a senior underwriter with Thomas Miller, the manager of the largest of the P&I mutuals.

Miller is also recruiting Malcolm, a well-known reinsurance specialist from Benfield, the second broker involved in placing the collective reinsurance contracts of the International Group clubs.

Gray, 43, will be reinsurance manager responsible for co-ordinating and providing advice for the full portfolio of mutuals run by Miller.