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Subject: Athens Correspondence Group (IMO Legal Committee): Terrorism and Athens Convention
Date: Fri, 11 Jun 2004

Dear Erik

Thank you for your letter of 30 May which I hope to respond to shortly on behalf of ICS. However in the meantime I have just received the attached Adviser from Marsh which I thought might be of interest to the Correspondence Group.

Kind regards
Linda

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The 2002 Protocol to the Athens Convention

The insurability of 'bio-chem' risks and certification of cover



Summary

- Capacity for 'bio-chem' risks is very limited and costly.
- A defence for ship operators in respect of losses resulting from acts of terrorism may help to facilitate compliance with the compulsory insurance requirement of the protocol.

A submission has recently been made by the International Group of P&I Associations to the International Maritime Organisation concerning certain limitations on P&I club cover and the effect those limitations have on the P&I clubs' potential ability to provide certification of the compulsory insurance the protocol requires. We feel moved to comment on the second of the two problems the International Group identifies, and to suggest one potential solution to that problem that would effectively take care of both of the International Group's concerns.

The market for War Risks, which as the International Group points out provides cover for acts of terrorism, excludes 'loss, damage, liability or expense directly or indirectly caused by or contributed to arising from any chemical, bio-chemical or electromagnetic weapon'. This clause, or something very similar to it, known as the 'bio-chem' exclusion, is included in all of the War policies now issued. 'Writing-back', in other words deleting the exclusion, relies on underwriters' 'net lines', meaning that War market underwriters would be unable to rely on their own reinsurance arrangements, since they in turn include the same clause. Capacity to insure this risk is therefore scarce and costly.

Although it may be possible to interest some of the more speculative insurance capacity in this area of risk, our assessment of the overall availability of capacity even combined with such net lines, as there may be, is that it is highly unlikely to be in any way adequate to embrace the requirements set out by the protocol for the passenger shipping industry as a whole. It is not just that the International Group clubs cannot certify that cover for this risk is in place, the fact is that the wider insurance markets will not provide the cover the protocol presently requires (obviating any discussion as to whether market underwriters would provide certification).

The Group offers no solution in its submission, but one that suggests itself to us is the revision of Article 4 part (a) of the protocol to include terrorism. This would address both of the Group's concerns over any misrepresentations the clubs would be obliged to make were they to certify cover in the manner currently required by the protocol.



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