

INSURANCE

Nightmare claim worries owners

Revisions to the Athens Convention are giving Greek owners the jitters.

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Fresh concerns over the huge liabilities facing the protection-and-indemnity (P&I) clubs under a revised Athens Convention are threatening to unravel efforts to bring in much higher compensation for passengership disasters.

Influential Greek shipowners, including some who are P&I club directors, are becoming increasingly worried about the threat that a payout, which could run to several billion dollars, would mean for the future of P&I cover for cargoships.

A key concern is that the solvency of clubs could be threatened by clubs becoming direct insurers of passenger liabilities under the new Athens Convention protocol.

Club directors fear they could even be caught up in litigation personally and be accused of failing to fulfil their fiduciary duty to the mutual and other shipowners.

The doomsday scenario is of a cruiseship or ferry catastrophe, with the loss of up to 3,600 passengers and 1,500 crew, and oil-pollution and wreck-removal claims on top.

The crew, pollution and wreck-removal claims would fall on some unfortunate shipowner, who would ask his P&I club to take over the claim under the normal pay-to-be-paid rules of the P&I club.

But P&I clubs would have given a guarantee that passenger claims would be paid. Consequently they would be exposed to direct action in respect of those killed or injured.

The P&I clubs have reinsurance of up to a little over \$2bn but could attempt to collect up to \$3.5bn more from the world's shipowners in the form of an



DOOMSDAY SCENARIO: Owners are increasingly worried about the consequences of, say, a major cruiseship disaster and, among other issues, the danger of themselves being held personally responsible.

Photo: Glenn Ostling

overspill levy. However, the problem a number of shipowners are concerned about is that liability to pay claims at stratospheric overspill levels is limited under the arrangements of the International Group P&I cartel by the clubs' ability to collect the levy from shipowners.

But there is no priority to such claims, with compensation normally paid on a first-come-first-served basis.

Payouts to crew members, for oil pollution and for wreck removal, might mean the clubs are unable to raise sufficient funds from the overspill levy to pay all passenger claims.

But the club that insured the tragedy ship would not be able to rely on the fact that funds are exhausted as they will have given guarantees to governments that precisely these claims would be paid.

Of course, the threat of claims

running to billions of dollars from a passengership disaster is very low but there is an argument that the Athens protocol threatens at least the theoretical solvency of P&I clubs and exposes their directors to lawsuits.

A number of other issues are also shaping up to prove controversial as P&I club boards meet over the next few months ahead of a key October International Maritime Organisation (IMO) legal-committee meeting on implementation of the Athens protocol.

But the P&I clubs have a powerful incentive to try to make the Athens protocol workable as the European Commission will likely impose a solution of its own if the IMO convention fails.

Other issues include Royal Caribbean's order earlier this year of the first of a new series of 5,400-passenger *Project Genesis* cruiseships that dramatically changes previous assumptions

that the biggest vessels would be the same owner's 3,600-passenger *Freedom of the Seas* class.

Greek shipowners who were instrumental in driving down the limit of P&I cover to \$4.25bn some years ago are also concerned that the limit has now crept up to about \$5.5bn.

The upper limit of P&I cover is calculated from property-damage liabilities under the 1976 Limitation Convention but this is tonnage-related and calculated in special drawing rights (SDRs). The growth of the world fleet and the relative strength of the US dollar against SDRs has produced the 30% rise.

There is also continuing concern about exactly how a scheme put forward by megabroker Marsh to separately guarantee terrorism risks will work as there is an absence of detailed information, including an indication of the likely cost.