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International Council of Cruise
Lines
Mr Michael Crye
2111 Wilson Blvd. 8th Floor
Arlington, VA 22201
USA

Dear Mr Crye,

Athens Convention Insurance Issues

Thank you for your letter 15 July. I am grateful for your help in clarifying the issues before the Diplomatic Conference in October; a view that I am sure I share with all delegates.

Insurance capacity

I understand your view to be that the insurance requirements of the Protocol should be limited to what is now offered by the P&I clubs of the International Group, because there will be no more insurance capacity available.

The clubs and virtually all other insurance buyers use brokers to evaluate the insurance market. I do not think there exists any better method for evaluating the market.

You suggest that we should not trust insurance brokers because they have a commercial interest in this matter (but that we should rather trust you). In my view, the commercial interest of brokers is our best performance guarantee, because if the brokers cannot deliver the insurance they have indicated, they will earn no commission. The commercial interest of the brokers, therefore, is to provide a realistic picture.

If you do not trust brokers - how did you acquire the market information put forward in your paper?

I have openly listed the brokers with whom I have liaised (see <http://folk.uio.no/erikro/WWW/corrgr/brokers.htm>). My impression is that there most likely will be insurance capacity

for USD 2 billion, but that not all agree that there will be insurance capacity for USD 4 billion.¹ I do not know with whom you have liaised to say that there will not be insurance capacity for at least USD 2 billion available for the clubs or for shipowners in the future. I therefore ask you again to name the major broker who will say that insurance at this level will most likely not be available. I hasten to add that many major airlines already have taken out insurance for such amounts (see below).

In the forthcoming Diplomatic Conference, as in all previous Diplomatic Conferences, delegates must act under some degree of uncertainty. Also the P&I Clubs are unwilling to commit themselves - not even for the limits they suggest would be appropriate. Those NGOs that have been heavily involved in the negotiations of earlier Conventions that include compulsory insurance provisions are very familiar with this. However, such uncertainty has never prevented government action, and should not stop governments from acting now.

Aviation insurance

Thank you for bringing the exemptions of the London Aircraft Insurance Policy² to our attention. However, you have apparently overlooked that those exemptions most likely do not apply in compulsory insurance. In your own country, the US, the provisions to this effect are found in Part 205 of Title 14 of the Code of Federal Regulations:³

"§205.6 Prohibited exclusions of coverage.

- (a) No warranty or exclusion in the policy or plan or in any endorsement or amendment to the policy or plan, nor any violation of the policy or plan by the carrier, shall remove the liability coverage required by this part, except as specifically approved by the Department. This requirement shall not limit the right of insurers to recover from the carrier for amounts paid.
- (b) A policy of insurance or a self-insurance plan required by this part shall not contain the following exclusions:
 - (1) Violation of any safety-related requirement imposed by statute or by rule of a government agency. ..."

¹ Your letter documents well that I have said this before.

² I have placed the entire policy at the website for further study, see
<<http://folk.uio.no/erikro/WWW/corrgr/index.html#air>>

³ See
<http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_14/14cfr205_00.html>.

Except from this rather important point, I wonder about your views: Is it so that you wish to introduce exceptions for the compulsory insurance in case the master is not properly qualified, etc?

In any event, the aviation precedent poses no problem for the draft Athens Protocol. On the contrary, I find it reassuring that in aviation insurance, liability insurance sums of USD 1.5 to 2 BILLION are not uncommon (all third party liabilities combined).⁴ As far as exceptions are concerned

-policies do NOT include a pay to be paid clause (that is; direct action is possible when allowed in national law)

-policies do NOT include a wilful misconduct clause.


The airline industry has actually even waved defences that they were legally entitled to (see on this Intercarrier Agreement on the website). This demonstrates an attitude that calls for respect.

Wilful misconduct

Also your points on wilful misconduct are dealt with elsewhere, see our draft submission under <http://folk.uio.no/erikro/WWW/corrgr/index.html#prot>. In order to further clarify matters, I respectfully ask you to respond to the following problems:

1. What exactly is wilful misconduct? What makes insurance of wilful misconduct unacceptable from your public policy point of view, while insurance of gross negligence apparently is acceptable?
2. Would you find it acceptable from a public policy point of view if a person that had been run over by a motorcar could not recover any damages under a compulsory insurance program because of wilful misconduct?

Yours truly,



Erik Røsæg (on behalf of the Norwegian delegation)

⁴ Again, I have consulted with brokers, who deal with aviation insurance on a daily basis.