

Professor Erik Watkins and Lloyd Watkins
IMO Correspondence Group

24th May 2005

Dear Sirs,

**Comments on letters dated 9th, 10th and 14th May from Lloyd Watkins of
the International Group of P&I Clubs and Prof. Erik Roseag of IMO.**

The International Group's requirement for absolute certainty that no P&I club, when named in the Certificate as the insurer or financial security provider under the Athens Protocol, can be made liable for passenger claims that arise from a proximate cause that is either expressly excluded, or in excess of a cover limitation under the P&I club's cover provisions is wholly understandable.

This point, raised by Lloyd Watkins as issue (ii) of his letter of 9th May, is answered by Professor Erik Roseag by letter dated 10th May. I believe it is possible to have more than one financial security provider under the Athens Protocol, consequently the liabilities between each must be clearly identifiable and divisible.

However, should the International Group want the combination of "belt and braces" then the agreed reservation clauses, together with the exception and limitation clauses, can be included on each passenger ticket.

Issue (i) in Lloyd Watkins' letter is outside the remit of Correspondence Group, being a matter between the IMO Legal Committee and State parties. His remaining issue is (iii), defined as being: "Passenger carriers have a liability for which no cover is available", and anticipates further debate.

Such a debate might suggest preferential treatment for passenger carriers, which is surely unacceptable. Tanker owners have uninsured liabilities for oil pollution in excess of the \$1 billion P&I cover limit, or in excess of War P&I cover. Also, all P&I club members are collectively liable for Overspill claims, being any P&I club claim that exceeds the limit of the International Group's reinsurances, and payable by members through Catastrophe Calls. I suggest the wider Catastrophe Call risk to all club members (P&I club claims exceeding \$2 billion) is already greater than the specific terrorism risk (terrorism claims exceeding hull value plus \$500 million) to a passenger carrier due to the preponderance of passenger ships trading in the US, where liabilities can be unlimited.

Lloyd Watkins is of course alluding to the limitations on terrorism cover, and particularly applies to carriers unable to get the higher cover available from a War Club. This issue would be largely alleviated if the War Clubs were to relax their nationality restrictions; for example one of the conditions of entry in the main War Clubs is the requirement for a British interest in ownership or management and for the Hellenic War Club, a Greek interest. The main War Clubs provide \$500 million of primary War and War P&I cover and the Hellenic War Club \$400 million which, when combined with the P&I clubs \$500 million excess, give maximum terrorism liability cover of \$1 billion or \$900 million. It is an anachronism in today's shipping world that the War Clubs still qualify the right of entry to nationality.

I revert to the mechanism of the Catastrophe Call that enables the International Group of P&I clubs to provide the highest levels of cover with apparent minimum cost. The maximum P&I club cover any one incident is approximately \$4.5 billion but the International Group only reinsures less than \$2 billion of the risk (net of co-insurance); claims that exceed this reinsurance cover fall back on all members of each International Group P&I club. Consequently, all P&I club members collectively underwrite Overspill claims which become apportioned to each member by way of a Catastrophe Call. No Catastrophe Call has yet been made and the risks of Overspill claims are currently accepted by members as being remote, perceived even as inconceivable. However, the advent of the Athens Protocol will increase the Catastrophe Call risk to the extent of it possibly becoming unacceptable to many members with no passenger liability risks.

Perhaps any debate should focus on the need for a clear internationally recognised definition of "terrorism". What is the difference between "piracy", which is fully covered under P&I club rules, and "terrorism" which since 9/11 became expressly excluded? For example, were the actions of Sir Francis Drake in the Spanish Main that of piracy or terrorism? I am not aware of the existence of any internationally accepted definition of terrorism other than the general guidance principles issued by HM Treasury under the Reinsurance (Acts of Terrorism) Act 1993 in respect of the Pool Re scheme.

Erik Roseag's request for a response from insurers, particularly the P&I clubs, suggests that the IMO needs to be satisfied that insurance will be available before getting ten states to ratify the Athens Protocol before the end of this year. If so they are wanting rather a lot, because:

- A. **One possible provider with every disincentive.** Only the P&I clubs within the International Group have the potential capability of fulfilling the role of insurer under the Protocol, subject to the reservations, exceptions and limitations discussed, to a maximum limit of SDRs 250,000 per passenger. Being owned by shipowners, the clubs have every reason to resist higher liabilities, particularly when combined with guarantees, and therefore have no incentive to oblige.
- B. **Short Time Scale.** Club directors and managers will have extra work and costs. P&I club directors will need to take soundings of the views of their club members, consider these soundings at their next round of board meetings during this coming October then report to the International Group. The real issue for the International Group is whether the 95% majority, not affected by the Athens Protocol, can be persuaded to continue to accept and underwrite the enhanced Catastrophe Call risks of the 5% minority that are.
- C. **Extra Reinsurance Costs.** Should the majority answer turn out to be no, then the International Group has two options. They can either increase the level of their reinsurance programme to say \$2.5 billion, or more, and thereby reduce the Overspill and Catastrophe Call risk, or they can cover passenger liabilities under a separate reinsurance programme which will entirely remove passenger liability risks from owners of non passenger vessels. Both will involve higher reinsurance costs.

Yours sincerely



Graham Barnes