



# **ASIAN SHIPOWNERS FORUM**

## **SHIP INSURANCE AND LIABILITY COMMITTEE**

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**The 18<sup>th</sup> Asian Shipowners Forum**  
**25<sup>th</sup> to 27<sup>th</sup> May 2009, Tainan**

### **ASF SHIP INSURANCE AND LIABILITY COMMITTEE**

Chairman's Report to the 18<sup>th</sup> ASF

#### **Events held during the year**

The 14<sup>th</sup> Interim meeting of the Committee was held in Hong Kong on Wednesday, 1<sup>st</sup> April 2009. Attending the meeting were the Secretary-General of the ASF and delegates representing the shipowner associations of China, Chinese Taipei, Hong Kong, Japan, and the Federation of ASEAN Shipowner Associations (FASA), as represented by delegates from the shipowner associations of Indonesia, the Philippines, Singapore and Vietnam. A full delegate list is attached as *Annex 1* and the Joint Statement from the meeting is attached as *Annex 2*.

#### **An Update of the Major Issues handled by the Committee**

List of Issues:

1. Hull and P&I Insurance Markets
2. "Rotterdam Rules", the UNCITRAL Carriage of Goods Convention
3. Bunkers Convention
4. EU Draft Directives – Asian involvement
5. Insurance aspects of Piracy and Armed Robbery
6. Abandonment and Crew Claims
7. Criminalisation

## **1. Hull and P&I Insurance Markets**

The general increases sought during the P&I renewal for 2009 and the increased supplementary calls being made for previous years have demonstrated the fact that many Clubs have found that investment losses from the economic crisis have severely reduced their reserves, resulting in an expected reduction of future investment income.

Mr. Nick Sansom kindly gave a short presentation on the renewal to the Committee at its Interim meeting, explaining how some Clubs might have been subsidizing technical losses with investment gains. It was now no longer possible to achieve the same level of cross subsidy, resulting in increased general and supplementary calls. Members discussed the concept of mutual insurance and the effect that the higher calls had on their cash flow during these difficult times. In respect of claims, while lower cargo values might reduce levels of claims, the reduced freight market might also eventually result in a higher number of claims.

Members also discussed the hull and machinery markets, and how lower values might result in lower claims, but also that the removal from the fleet of older ships also reduced premium income. Also, with the lower values across the fleet, and reduced demand for ships, it was likely that particular average claims would fall and total loss claims rise.

## **2. “Rotterdam Rules” – the UNCITRAL Carriage of Goods Convention**

The UN General Assembly adopted the draft Convention on 11 December 2008, and a short ceremony will take place in Rotterdam in September 2009 to mark the Convention as being made open for signature.

The Committee did not discuss the pros and cons of the new Convention at its Interim meeting, because a comparison paper had not been produced by the time of the meeting. The Committee, however, did discuss how the ICS had come to the conclusion that the new Convention should be supported and that early ratification should be encouraged.

The ICS decision was made because the new Convention represents a broadly acceptable international instrument that ought to be supported in order to avoid the alternatives of emerging national and regional provisions, particularly those from the EU. The decision of the ICS was made after the Chairman of the ICS Maritime Law Committee asked the following questions.

- Was it likely that the Hague Visby Rules would survive? The answer was ‘no’.
- Was there any alternative to the Hague Visby Rules? The answer was a firm ‘no’.
- Was there a risk of a regional solution? The answer to this was ‘yes’, via either a solution in Europe or the US.
- Could such a regional solution be supported? The answer was ‘no’.

There was therefore felt to be no alternative but for the ICS to support the new Convention. The International Group is so far ‘neutral’ on the issue, but has confirmed

that liabilities arising under the new Rules would be covered if the Rules were compulsorily incorporated in contracts of carriage.

The new Convention will come into force 12 months after ratification by twenty states.

### **3. Bunkers Convention**

It is reported that 37 States have now ratified the Convention, well up from the initial 20 that had ratified when the Convention came into force in November 2008. While early entry into force of Conventions is essential, the Committee at its Interim meeting discussed whether this should be achieved more through persuasion and high ratification thresholds in order to ensure that there is sufficient time for the necessary certificates to be issued, rather than through low ratification thresholds and 'no less favourable treatment' clauses. It is clear that, despite frantic action, which could only take place once it was known that the Convention would come into force, the industry was not ready for the entry into force of the Convention, and faced great difficulty in obtaining the necessary certification to show compliance by the due date.

The International Group has advised that several States parties have accepted electronic blue cards, which assist both the insurance industry to provide prompt confirmation of insurance as well as the administration of the State concerned. Members agreed that the ASF should promote the acceptance of electronic blue cards by States that have not already signalled their acceptance of the procedure.

### **4. EU Draft Directives – Asian Involvement**

The HKSOA and other ASF Associations have, both directly and through the ICS (and ECSA), commented on the various EU draft Directives, most essentially on the "Civil Liability and Financial Guarantees of Shipowners" (now called the "Insurance Directive"), and on the Criminal Sanctions for Oil Pollution. But there does not seem to be any obvious input into the consultation process from Asian governments, either by themselves or together as a regional inter-governmental group. Bearing in mind the recent comments from the IACS Chairman at the HKSOA Luncheon for a stronger Asian voice, and by the Japanese Government for an inter-Asian governmental grouping, the Committee at its Interim meeting considered that the Committee and, by extension, the ASF, should lobby Asian Governments more obviously to join in the process of consultation in Europe and also in the United States where proposed regulations could affect international shipping.

### **5. Insurance aspects of Piracy and Armed Robbery**

While the industry has succeeded in bringing the awful situation in the Gulf of Aden to the attention of the United Nations, and there are now many more naval ships in the area ready to protect merchant shipping, attacks are still continuing, sometimes in full view of the naval escorts. Some companies have decided to avoid the area as well as the high Suez Canal charges by taking the longer Cape route.

The Committee, at its Interim meeting, discussed the insurance implications of Piracy and Armed Robbery. It would appear that ransom payments, if made to release the ship and cargo, may be considered as General Average and can be claimed under Hull and War Risk policies, and P&I are ready to cover consequences of piracy that result in a P&I covered risk under the discretionary clauses contained in many P&I terms of cover. Members also noted that many War policy renewals were now clearly including Piracy as a risk covered.

## **6. Abandonment and Crew Claims**

The ILO/IMO Joint Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers met in Geneva from 2<sup>nd</sup> to 6<sup>th</sup> March 2009. Draft mandatory texts have now been agreed and these will be forwarded to the IMO Legal Committee and the ILO Council as proposals for amendment to the Maritime Labour Convention, 2006, when it enters into force. The amendments have been written in such a way that they may be made by the rapid amendment procedure under Article XV of the Convention, but this may only be done once the first tripartite committee is formed following the ratification of the Convention.

The text of the two proposed amendments was tabled at the Interim meeting, and members discussed these, in particular the success of the Employer's Group in obtaining the Subrogation Clause (clause 12) in the Abandonment text. The Committee gave its support to the amendments, and agreed a statement to this effect in order to encourage rapid adoption into the Convention and entry into force.

## **7. Criminalisation**

The HKSOA continues to be heavily involved in the detention and appeal of the two officers from the Hebei Spirit. However, it is now well accepted that the Fair Treatment Guidelines do not apply in this instance, because of the nature of the Guidelines and because Korean national law supersedes the intent of the Guidelines. The HKSOA will continue to work with the P&I Club and the lawyers involved to press for the proper trial and release of the seafarers. The Committee, at its Interim meeting, discussed the present status of the case.

In another case, the European Court of Human Rights recently held that the amount of bail demanded by the Spanish Courts to allow Capt. Mangouras of the Prestige to be released from custody (Euros 3 million) "although high, had not been disproportionate, regard being had to the legal interest being protected, the seriousness of the offence and the catastrophic consequences, both environmental and economic, stemming from the spillage of the ship's cargo". This is yet another example of the seriousness of the incident determining the treatment of officers, rather than the seriousness of any action taken or not taken by those officers. In other words, officers on board large tankers or ships that have the potential to pollute have a greater chance of incarceration for long periods before trial than officers sailing on other ships; clearly an unfair and discriminating situation. Members agreed that the Committee should take a vocal position on this issue.

In this respect, there is growing interest for industry to support an Amicus brief into an appeal to the European Court of Human Rights. After discussion, the Committee agreed to support the Amicus brief, and to ask for full ASF agreement to join the Amicus.

*Attached:*

*Annex 1 – 14<sup>th</sup> Interim meeting Delegate List*

*Annex 2 – 14<sup>th</sup> Interim meeting Joint Statement*

*Annex 3 – Cefor Statistics*

George Chao  
Chairman, SILC

Hong Kong, 8<sup>th</sup> April 2009