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LEGAL COMMITTEE
96th session
Agenda item 4

LEG 96/4/2
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PROVISION OF FINANCIAL SECURITY

(i) Progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

Submitted by the International Group of P & I Associations (P & I Clubs)

SUMMARY

Executive summary: The International Group of P & I Associations believes that the draft text of Appendix II to the report of the ninth session of the Working Group (see annex to document LEG 96/4/1) does not accurately reflect the principle that the financial security envisaged in the draft text is restricted to financial security for contractual compensation, that is compensation/payments due to a seafarer or his dependants following his death, personal injury or illness as provided for under his employment contract, collective bargaining agreement or other employment agreement

Strategic direction: 1 and 1.1

High-level action: 1.1.2

Planned output: 1.1.2.3

Action to be taken: Paragraph 8

Related documents: LEG 95/4/1 and LEG 95/10

1 The International Group of P & I Associations (P & I Clubs) comprises 13 principal not-for-profit mutual insurance associations known as Clubs. The Clubs are true mutuals in that their shipowner and charterer members are both insurers and insureds and provide insurance cover to their members for third party liabilities which they may incur arising out of the use and operation of ships. Between them the P & I Clubs insure approximately 90% of the world's ocean-going tonnage and 95% of the world's tanker fleet.

2 The P & I Clubs have attended all of the nine sessions of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers (the Working Group) and have submitted a number of documents to the Working Group.

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3 The objective of the ninth session of the Working Group which was held in Geneva between 2 and 6 March 2009 was to reach agreement on the principles for a future mandatory text in relation to financial security, in the case of both abandonment of seafarers and compensation for contractual claims for the death or personal injury of seafarers (see paragraph 5, report of the Working Group (annex to document LEG 96/4/1)). Draft text was developed during the session in the form of proposed amendments to the Maritime Labour Convention 2006 (MLC), and the Working Group agreed to recommend, *inter alia*, to the IMO Legal Committee and the ILO Governing Body (see paragraph 157 of the annex to document LEG 96/4/1) that:

- (i) the principles embodied in the draft text (which was appended to the report of the Working Group as Appendices I (Abandonment) and II (Compensation) should be considered as a basis for finalising a mandatory instrument or instruments; and
- (ii) an amendment to the ILO Maritime Labour Convention 2006 (MLC) was the best way to create such a mandatory instrument or instruments, but that the Legal Committee should remain seized of the issue and keep it under consideration in the event that amendment to the MLC proves not to be feasible or timely.

4 At the ninety-fifth session of the Legal Committee the observer delegation of the P & I Clubs stated that its understanding of the recommended draft text, developed in relation to financial security for compensation for contractual claims for the death or personal injury to seafarers, by way of an amendment to Standard A 4.2.2 of the MLC (Appendix II), envisaged that the financial security to be provided was limited to claims for contractual compensation, that is, compensation/payments due to a seafarer or his dependants following his death, personal injury or illness as provided for under his employment contract, collective bargaining agreement or other employment agreement (employment contract).

5 The wording of the draft text appears to the P & I Clubs to imply this. However, the P & I Clubs believe that the reference in the draft text to a number of different terms e.g., contractual claims, contractual compensation and compensation and most importantly the definition of the term “contractual claim” contained in paragraph 1 of Appendix II could lead to confusion and possible misinterpretation, whereby the term “contractual claim” could be construed as relating to all types of claim arising from the death, personal injury or illness of a seafarer, for instance claims for compensation arising in negligence, tort or other non-contractual claims and that financial security would therefore be required for all such types of claims. The P & I Clubs believe that any confusion can be resolved and the position clarified by refining the draft text.

6 The P & I Clubs believe that it has always been the intention of those participating in the Working Group that the provision of financial security should be restricted to claims for contractual compensation, as referred to above.

In support of this the P & I Clubs would refer to:

- (i) the submission by the International Transport Workers’ Federation (ITF) to the eighth Working Group session (document IMO/ILO/WGLCCS 8/2/6) submitted on behalf of the seafarers, the annex of which sets out the ITF’s proposal in respect of the provision of financial security in respect of contractual claims for personal injury or death of a seafarer, there are a number of references to what is meant by “contractual claims”:

- (a) 1(b) – “Claims” means valid contractual claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers”
 - (b) 1(c) – “Insurance” means effective insurance or other forms of financial security to meet claims against shipowners ...”
 - (c) 3(b) – “Shipowners shall take steps, when a claim arises, for its prompt payment. Shipowners shall also ensure that all valid contractual claims shall be paid in full. There shall be no pressure.... for a payment less than the contractual amount ...”.
- (ii) the joint submission by ITF and the International Shipping Federation (ISF) to the ninth Working Group session (document IMO/ILO/WGLCC 9/3), annex 1 of which sets out the ITF and ISF proposals and comments in relation to financial security for compensation in respect of the death, illness and injury of a seafarer. Paragraph 2 states that:
- “National laws and regulations shall provide that the financial security to assure compensation as required by Standard A4.2.1, paragraph 1(b), for [legally valid and agreed] claims shall provide that:
- (a) The contractual compensation where set out in the seafarers employment agreement and without prejudice to (c) below, shall be paid in full and without delay; there shall be no pressure to accept a payment to less than the contractual amount.
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- (c) In accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights ...”.
- (iii) IMO/ILO resolution A.931(22) and Guidelines: resolution A.931(22) and its Guidelines on Shipowners Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers were developed by the Working Group and adopted by the IMO Assembly and the ILO Governing body in November 2001. Paragraph 2.1.4 defines “Claims” to mean “valid contractual claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers”. The Guidelines also recommend the use of a Model Receipt and Release Form (the Form) appended to the Guidelines which refer to the shipowner discharging his obligation to pay “contractual compensation” ... under the terms and conditions of the seafarers employment, without prejudice to the seafarer’s “right to pursue any claim in respect of negligence, tort or any other legal redress available and arising out of the above incident”. Paragraph 10 of the draft text provides that “the parties to the payment of a contractual claim may use the Form ...”.

Conclusion

7 The P & I Clubs believe that in order to meet the objective/intention of the Working Group in relation to financial security for compensation for death, illness and personal injury to seafarers and to reflect the principles agreed at the ninth session, the draft text needs to be amended at some stage. The P & I Clubs are not suggesting that the appropriate stage has now been reached, but are simply bringing these views to the attention of the Legal Committee, in order that they can be discussed in whichever forum is decided on to progress the work of the Working Group.

Action requested of the Legal Committee

8 The Legal Committee is invited to note the information and comments contained in this document and to comment as it may deem appropriate.
