



**IUMI CONFERENCE - PARIS  
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**LIABILITY COMMITTEE PRESENTATIONS**

**"COMPULSORY LIABILITY INSURANCE FOR VESSELS"**

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# IUMI 1997 COMPULSORY MARINE LIABILITY INSURANCE

## INTRODUCTION

Last year in Oslo, I spoke about the new Hazardous and Noxious Substances Convention, on the subject of which IUMI submitted a position paper to the Legal Committee of the International Maritime Organisation (IMO). Since the agreement of the HNS Convention, the most significant matter to be addressed by IMO is compulsory marine liability insurance. Strictly it is now referred to in IMO as the "Provision of Financial Security" since alternatives to traditional insurance, such as bank guarantees or self-insurance are also mooted. IUMI has recently submitted a position paper on the subject, after consultation with other IMO Observers such as the International Chamber of Shipping and the International Group of P&I Clubs and it is about this that I would like to speak quite briefly today.

## ORIGINS

In the 74th Session of IMO Legal Committee in October 1996, the United Kingdom delegation submitted a paper outlining concerns that a percentage of the world's seagoing vessels were trading uninsured. Echoing the concerns of several other delegations, notably the Norwegians, it was suggested that trading uninsured gave such shipowners an unfair financial advantage over other more responsible owners and presented a risk to governments, other vessels and third parties who might suffer loss from a maritime accident. The International Transport Federation (ITF) was concerned especially for the crew and dependants of crew who might be injured aboard uninsured vessels. It was thus proposed that a uniform regime be developed to ensure that shipowners were able to meet their liabilities and carry certificates to prove it. Such a regime would also have to verify the financial standing of any insurer issuing certificates. Other matters to be addressed alongside this would be standardization of insurance clauses and certification. Direct action against insurers was proposed, with an insurer's defences limited to those which would have been available to the insured owner and the benefit of limitation only upto those amounts which would have applied to the owner. This would negate various relatively standard mutual P&I policy defences relating to unseaworthiness of the vessel, wilful misconduct and gross negligence and also the application of the "pay to be paid" rule which requires an owner to settle a claim before being indemnified by his insurer. The British delegation suggested several possible courses of action to encourage the purchase of insurance. The status quo could remain, with voluntary insurance by shipowners, but this was not seen as a realistic option by the British. Alternatively, port or coastal states could regulate ships calling at their ports, or neighbouring states in a particular region could regulate passing traffic, or flag states could require compulsory insurance. This last option was favoured particularly by the Polish delegation. It was raised as a possibility that the shipping industry might provide a voluntary fund for uninsured marine loss or IMO could develop a free-standing convention or protocols to existing limitation conventions or the Athens Convention on liability to passengers. It was thus agreed to establish a Correspondence Group, (with Norway as the lead group) to co-ordinate the views of various delegations and observers and to consider whether a convention, code or recommendation was the most appropriate instrument to encourage the provision of compulsory insurance.

## **CORRESPONDENCE GROUP ACTIVITY**

In March 1997, Norway submitted a report on behalf of the Correspondence Group reflecting the diverse views of the participants. The Group focus was upon how to implement a requirement for evidence of financial responsibility and whether there was sufficient justification for doing so. The report identified four main motivations for a uniform regime: Firstly the guarantee of compensation to a victim of a maritime accident, even if the liable party is insolvent or unavailable; Secondly, uniformity of laws and the avoidance of various local or national regimes, with the possibility of conflict; Thirdly insurers might encourage higher standards of safety and finally shipowners could compete fairly because they were subject to the same expenses in providing evidence of financial security.

Several possible options were suggested: Perhaps a convention addressing both liability and insurance (along the lines of the CLC oil pollution convention), or a code or convention on compulsory insurance only, or a code or convention on uniformity of certification but leaving the actual requirement for financial responsibility to national law (which could refer to the standard certificate for convenience) or no action on compulsory insurance at all. The USA Delegation submitted a paper outlining their experience of running the COFR (Certificate of Financial Responsibility) scheme related to the Oil Pollution Act 1990 (OPA 90). They indicated that beyond initial start-up costs and establishment of a database for certified vessels, a team of only fourteen people could administer the system in the United States, with about 20,000 certificates in existence at any one time. The scheme was self-funding, reliant on the licence fee. Actual enforcement is performed by the coast guard. The Norwegian summary went on to comment upon direct action against insurers. Views ranged from the belief that this alone would empower any legislation and was thus essential, to views that such provisions were irrelevant or unnecessary. It was proposed by one delegation that IMO maintain a list of approved providers of financial security or alternatively that such providers be monitored by the state authorities where they were domiciled.

Passenger death and personal injury claims have emerged as a priority for the Group. A convention for this kind of loss only, perhaps based on the CLC (Oil Pollution Convention) model could be devised but it might be easier to extend by protocol the Athens Convention, which currently regulates passenger liability. The drawback is that the Athens Convention itself has not been accepted in many countries.

## **THE IUMI POSITION**

It is first necessary to establish what is the relevance to IUMI members of these proposals. For those of us working in the Lloyd's market, the most obvious exposure to a compulsory liability regime including direct action is through reinsurance of the International Group of P&I Clubs, providers of insurance to about 90% of the world's ships. There is also the peripheral question of collision liability and fixed and floating object cover, sometimes shared between the marine hull market and the P&I Clubs and sometimes covered entirely by one or the other. Our interest here is both as providers of a narrow form of liability insurance and on the other hand our exposure to hull physical damage caused by other uninsured vessels.

IUMI recognises that reinsurance of the P&I Clubs represents by far the most significant channel for any more onerous liability or insurance regime to its members. We are therefore broadly supportive of the International Group position paper submitted recently to the Correspondence Group. First and foremost, it is estimated that about 90% of vessels by tonnage are insured with mutual P&I insurers anyway. It is also estimated that an additional 5% are insured with non-mutual fixed premium insurers, also reinsured into the London market. It is further believed that China, Indonesia and the Philippines provide state schemes to insure their own coastal and inter-island traffic. This suggests that the number of uninsured ocean going vessels represents only a small percentage of vessels trading and that most vessels trade fully insured for a broad range of perils with a certificate on board to prove it. Members of the Legal Committee at IMO have been unable to cite examples of any maritime claims being unmet because of a lack of insurance. From a purely commercial perspective, the very few vessels trading uninsured are likely to be the least attractive from an underwriter's point of view, if it is assumed that cost-cutting on insurance is likely to be reflected elsewhere in reduced maintenance and training. There is no suggestion, however that underwriters be obliged to insure any particular vessel. But whether we wish to insure or not, the administrative difficulty and expense in devising and implementing a new worldwide system of certification, monitoring of vessels and of an insurer's financial standing does not seem justified by the incidence of uninsured loss.

Except in the case of very specific pollution conventions, direct action against Clubs does not occur and the provision of such a right of action in many different regimes, without a corresponding liability regime presents a legal quagmire, which IUMI members could be expected to reinsure. To devise a new liability regime, however, to match a compulsory insurance structure would negate much of the international marine law in force today and would present equally massive problems of linkage between existing liability regimes and ratification by maritime states that could take decades to solve. We have also noted the views of the British Maritime Law Association, which uses the United Kingdom compulsory motor insurance regime as an indication that the stubborn minority of owners who refuse to insure even in the face of criminal or commercial sanctions (such as refusal to allow berthing or discharge without a valid certificate) would not change their habits simply because IMO created a new regime which required them to do so.

In the very specific area of passenger personal injury, we are awaiting more detailed proposals on the subject, although evidence as to how many passenger vessels trading uninsured has yet to be seen.

Our overall conclusion, however must be that the subject of financial security be removed from the agenda of the Legal Committee on the basis that the expense, time and legal complication is not justified by past or anticipated future losses.

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