



## **IFSMA AGA 2005**

### **SEAFARER PROTECTION – COMMERCIAL INSURANCE SOLUTIONS**

It was my pleasure on behalf of Seacurus Ltd to accept the invitation extended by Capt MacDonald to speak to you today at this the 2005 IFSMA AGA.

Seacurus are a company dedicated to the pursuit of providing specialised insurance products to protect today's seafarers from the modern day perils of the sea, a subject which is close to my heart having spent fourteen years at sea myself.

By modern day perils of the sea I am referring to the increasing trend amongst some coastal states to criminalise the ship's Master and crew for incidents which have hitherto being considered to be maritime accidents.

Landmark cases such as the Prestige, Tasman Spirit and Katerina lend weight to the considerable wealth of opinion shared between shipowner and seafarer groups alike that many coastal state administrations are developing a tendency to treat Seafarers as potential criminals or undesirables rather than respected professionals. Of course, the most likely outcome is that this will render a career at sea unattractive and put off prospective seafarers rather than prevent accidents.

In an attempt to reverse this worrisome trend it is reassuring to know that the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) saw the good sense to support IFSMA's work on the development of draft guidelines on the fair treatment of seafarers.

Seacurus support this positive move that clearly aims to avoid further maltreatment and prevent long periods of detention for seafarers involved in maritime accidents. The draft resolution calls on all governments to respect the basic human rights and to allow swift repatriation or re-embarkation of seafarers involved in accidents.

It was further to the most recent discussions of this IMO/ILO Expert Working Group in April this year that the USCG, of all people, introduced Seacurus to IFSMA with a view to discussing how and if commercial insurance solutions may be used to better protect the human, legal and welfare rights of seafarers today.

The recent cases to which I have made reference in this speech have highlighted the weaknesses that can and do arise when seafarers place an over reliance on the assistance that their shipowner's liability insurance, namely P&I insurance may offer, to provide rights and remedies for personal liabilities that the seafarer may assume in the aftermath of a maritime accident.

I am well aware of the gaps in protection that exist under P&I insurance having until recently spent seven years as a P&I claims executive myself.

Issues of criminality have always been grey areas for P&I insurers and ordinary operational costs such as crew remuneration, subsistence and repatriation are not operational costs routinely covered by a shipowner's P&I insurance, following a criminal investigation.

Further to which it is our considered opinion that commercial insurance solutions may have practical applications in three areas of seafarer protection and may eventually result in positive benefits for the seafarer and industry alike.

The three areas to which I refer are:

- 1) Seafarer Witness Costs Insurance
- 2) Seafarer Abandonment Insurance, and;
- 3) Seafarer Legal Costs Insurance

## **SEAFARER WITNESS COSTS INSURANCE**

Is the main area of concern for the working group considering the fair treatment of seafarers.

Recent cases in the US have seen ship's crew being served with subpoenas, requiring them to provide testimony before a grand jury as witnesses to crimes in the United States. Cases to date have largely surrounded misrepresentations made in ship's log books with respect to the disposal of oily wastes - the so called, "Oily Water Separator Task Force" cases.

In cases such as these a number crewmembers, often as many as 10 are subpoenaed and disembarked from the vessel awaiting trial. Whilst the US justice department has an obligation to comply with speedy trial procedures seafarers have been known to be detained in the US for up to three months or more. During these periods of detention the crew's contract of employment may have come to an end and they may no longer be receiving a salary or support from their owners. In such circumstances seafarers, their owners and the coastal state administration would benefit from recourse to an underlying policy of insurance that would maintain the ongoing payment of the seafarer's salary, the costs of accommodation and food and the eventual costs of their repatriation.

A number of the international group P&I clubs have only this week issued clarification that P&I does not cover oily water separator offences or offences of making false statements to the authorities.

Were the coastal state to give consideration to making such an insurance requirement mandatory for vessels visiting their ports, seafarers would be afforded the complete protection of an insurance product designed to respond to the specific circumstances of these cases and provide coverage for the costs incurred by the shipowner and seafarer when called as witnesses in the aftermath of such a maritime accident or incident.

Seacurus continue to work with IFSMA in the search for a solution to this ongoing problem.

## **SEAFARER ABANDONMENT**

Notwithstanding the recent boom in shipping and unprecedented freight rates cases of seafarer abandonment in foreign ports continue to arise. The legal difficulties which emerge in these cases relate very much to the anonymity of owners (and sometimes mortgagees), the refusal of the flag States or port States to take responsibility, and the difficulty of the crew obtaining representation and advice to enforce their lien on the ship when it is under arrest. Abandoned crew can often go for months without adequate food, water and remuneration. With nobody to underwrite the costs of their repatriation they are often left onboard to try and recover their losses.

Such cases have led to cases of extreme hardship for the seafarers and their families. Once again recourse to an underlying policy of insurance that would pay in the event of default on the part of shipowner as a consequence of a severance of ties between the shipowner and his financial obligations towards his crew and vessel may relieve this unnecessary suffering.

Once again an IMO/ILO expert working committee has been formed to consider this matter in greater detail. The committee have provided a set of guidelines that actively endorse the need for such an insurance solution and some flag States namely, Norway, Liberia and Russia have instituted a statutory requirement for ships to carry insurance and/or a financial bond to cover all such costs.

Certainly at present, it is our understanding that the Guidelines are largely ignored and we await progress towards a mandatory system of financial security that will genuinely protect seafarers rather than allow states to put in place apparent solutions.

Seacurus will be speaking to the IMO/ILO Expert Working Committee in September this year to explore whether a commercial insurance product would

be a viable solution to this ongoing problem. Insurance provides a valuable opportunity to get a workable low cost, regulated system in place to allow industry to regulate industry.

## **SEAFARERS LEGAL COSTS INSURANCE**

Such are the severities of the penalties which may be levied against seafarers found guilty of environmental crimes namely protracted jail sentences and hefty fines (\$250,000+) that proper consideration needs to be given to the viability of an insurance product to cover a seafarer's legal costs.

Unions such as NUMAST offer their members "certificate protection" but it remains to be seen to what extent this type of protection would have assisted the likes of Capt Mangouras had his owner's P&I insurers not decided to exercise their discretion come to his rescue.

Seacurus would welcome the opportunity to discuss this type of cover with seafarer groups such as IFSMA, the Nautical Institute, IMAREST and the HCMM to establish if their collective memberships had a positive interest in the development of such a product.

The main concern for the insurers for this type of product would be the relatively small size of the potential market, the complexity of the legal network needed to support the multi-jurisdictional nature of the claims and the size of the potential liabilities arising out of such cases.

However, such concerns would not deter further enquiry if such a collective interest were to exist and Seacurus will continue to further discussions in this regard.

## **IN CONCLUSION**

Unfortunately the criminalizing of ship's crews and in particular their officers in many cases where oil pollution has occurred has been increasing in recent times. In such cases the Master and others are often seen as scapegoats for anonymous owners with defective ships. In order to avoid these modern day perils of the sea it is most important that seafarers of today where possible make an accurate personal risk assessment of any one particular offer of employment or another. Seafarers have recourse to international seafarers help lines, unions, NGO's and seafarer professional associations such as IFSMA and should, when possible, make use of these important information networks before signing on.

Moreover, seafarer representatives should continue to lobby policy makers to mandate the international requirement for insurances that will safeguard the legitimate interests of a globalized workforce.

I will leave you with a quote from one such industry commentator, Doug Stevenson of New York's Center for Seafarer's Rights who continues to campaign tirelessly to improve and protect the rights of seafarer's of all nationalities:

*All who work at sea in the service of a ship face particular perils, endure substantial physical hardships, put up with strict discipline, and suffer lonesome separations. They have special lives and work and they need special laws to protect them. These special protections may cost maritime employers more than what land-based employers might pay, but these costs are necessary for recruiting and retaining good people.*

*The merchant maritime industry is facing a worldwide crisis in attracting people to and retaining them in a shipboard career. There is a direct relationship between seafarers' rights and recruitment and retention.*

*I am under no illusions that if the industry simply protects seafarers' rights, all of the recruiting and retention problems will go away. The problem is much more complex. However, the industry's response to seafarers' rights sends a very strong message about how it values its shipboard personnel. To mariners and to prospective mariners, the industry's actions speak much stronger than words.*

*When the industry creates rights for seafarers; when the industry staunchly preserves traditional seafarers' rights, mariners understand that they are valued and respected for their contributions to the enterprise. When the industry ignores or erodes traditional seafarers' rights, then mariners come to another conclusion. Mariners' perceptions of their worth and dignity are certainly major factors in their joining and in their remaining in a shipboard career.*

*- Doug Stevenson of the Center for Seafarers' Rights*

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