

JANUARY 2, 2002

CIRCULAR NO. 1/02

TO MEMBERS OF THE ASSOCIATION

Dear Member:

**INTERNATIONAL MARITIME ORGANIZATION (IMO)
AND INTERNATIONAL LABOR ORGANIZATION (ILO):
JOINT GUIDELINES ON SEAFARERS**

Members are advised that at the 83rd Session of the IMO Legal Committee it was agreed that two separate Resolutions and associated Guidelines relating to:

1. The Provision of Financial Security in the case of Abandonment of Seafarers; and
2. Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers

should be recommended for adoption by the IMO Assembly and approval by the Governing Body of the ILO. Both organizations met in November 2001 when the Resolutions and Guidelines were adopted and approved. The proposal for consideration of both sets of Resolutions and Guidelines had been initiated by the International Transport Workers Federation.

The main elements of the two sets of Guidelines are as follows:

1. Resolution and Guidelines on Provision of Financial Security in case of Abandonment of Seafarers.

- Shipowners should arrange financial security for seafarers in the event of abandonment and carry a certificate on board vessels attesting to the existence of such security.
- Seafarers should have a direct right of action against the security.
- The security should extend to:
 - costs of repatriation
 - maintenance of and expenses incurred by seafarers during abandonment
 - payment of outstanding remuneration.
- The requirements for certification.

It was made plain in discussions relating to this issue that International Group P&I Clubs do not provide cover for crew maintenance, repatriation expenses or other risks arising out of abandonment by reason of insolvency.

2. Resolution and Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or death of Seafarers.

- Shipowners should arrange effective insurance or other financial security in respect of their obligation to pay contractual compensation for death to and personal injury suffered by seafarers, and carry a certificate on board vessels attesting to the existence of that security.

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- Valid claims should be paid promptly and in full.
- The insurance should provide for:
 - prior notification to seafarers if the insurance is to be cancelled and immediate notification if it is not to be renewed
 - payment of all claims during the period for which the certificate is valid.
- The requirements for certification.

The Resolutions and Guidelines were drafted by a Joint IMO / ILO Expert Working Group which was established for the purpose of assessing and evaluating the extent of potential problems relating to liability and compensation in connection with seafarers' claims for death, personal injury and abandonment.

At meetings of the Working Group on Seafarers' Claims for Personal Injury or Death, it was shown that such claims do not give rise to significant problems and that International Group P&I Clubs handle seafarers' claims fairly, efficiently and expeditiously. Moreover, the IMO Resolution providing that vessels should carry evidence of liability insurance and the associated Guidelines which had recently been adopted by the IMO were perfectly adequate to provide for seafarers' claims. It was argued that there was therefore no need to develop additional Resolutions or Guidelines in relation to this issue.

Despite these arguments, the decision was taken to proceed with the new Resolutions and Guidelines.

Unfortunately, the Guidelines produced are not only of doubtful utility, they are also of doubtful practicality. International Group P&I Clubs have indicated that they would be unable to issue notifications to individual seafarers. In addition, they have pointed out that claims for liabilities to seafarers are always subject to Club Rules and a vessel's terms of entry (including deductibles) and that payments could not therefore be guaranteed to individual seafarers.

This means that International Group P&I Clubs will not be able to issue the certificates envisaged in either of the Guidelines.

The two Resolutions and Guidelines take effect from January 1, 2002. However, IMO Resolutions and Guidelines are not mandatory and, therefore, do not have legal effect until they are implemented in domestic law. **Accordingly, there are no steps for Members to take unless States begin the process of implementing the Guidelines.**

Members are requested, insofar as they may be able, to keep the Managers advised of any steps taken by States in relation to the Resolutions or Guidelines. In the meantime, the Managers will as usual be pleased to respond to any questions Members may have in regard to these issues.

Yours faithfully,

Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB