ИНГОССТРАХ
Ingosstrakh

January, 2009

CIRCULAR

Re: ***CREW CLAIMS. MANAGING. REPORTING.***

After numerous approaches from the Assureds to different issues regarding crew claims and on the basis of accumulated experience, Ingosstrakh wishes to draw an attention of the Members to some important points, relating to crew management, which seem obvious and easy but in fact they need detailed consideration.

This circular has two main directions: the first one refers to crew management and contains some issues by consideration of which we seek to facilitate the Members to avoid frequent mistakes making in this direction of their business (managing). The second one touches upon the issues relating to proper management after occurrence with the crew had taken place (reporting).

Managing

Managing implies not only engagement of qualified and experienced seafarers but also correct composition of documentation relating to the employment and proper instruction.

It is not a secret that properly compiled agreement is the main part of success not only for any sort of business projects but for labor relations as well. Here below are some questions concerning labor relations where Shipowners, frequently through the managers, crewing operators, manning agents are the employers and the seafarers – the employees.

By current report we advisedly do not refer to any of existing standard labor agreements but it should be noted that it is preferably to deal with the agreements worked out in details.

It sometimes happens that the employers do not care enough of compiling/drafting of an employment agreement. The seafarers in their turn usually sign contracts proposed by an employer not having even considered carefully the terms and conditions of the agreement they sign.

An employment agreement where not all essential terms and conditions are specified and some of the Shipowners' obligations are not expressly stipulated may cause trouble both to an employee and to an employer.

Needless to say that generally all crew claims refer to illness, injury or death of crew members. As a consequence of it, any applications of the Shipowners to their insurers concern reimbursement of the expenses which the Shipowners have to incur in accordance with terms and conditions of relevant agreement/contract due to the incidents/accidents to the crew members.

One of the widespread mistakes of the Shipowners applies to the reference to P&I certificate of insurance made in the employment agreements. For instance:

1. Medical service shall be secured as per provisions of P&I Club Insurance;
2. In case of injury/illness the seafarer is entitled to compensation as per P&I Policy;
3. The Company (the Shipowner) should cover the seafarer with the insurance in accordance with P&I Policy …etc.

We have to clarify that *on the contrary* the terms of P&I Insurance Rules (hereinafter referred to as "Rules") as well as certificate of insurance refer to the terms and conditions of employment agreements. Rules state that "the cover shall be provided to the Insured where the Insured's liability to pay damages or compensation to sick/injured crew members or their relatives in case of death of crew member *arises under the terms of a collective agreement or contract of service or employment* entered into between the Insured and crew members of the Insured ship and approved by the Insurer".

Moreover some of the employment agreements contain provisions assuming personal life/health insurance of the seafarers engaged. Frequently the Shipowners include mentioned conditions meaning their own liability. This will always cause a confusion of two independent ideas. The Insureds ought to know that *voluntary medical insurance is not the same as a third party insurance of civil liability of the Shipowners*. Nobody objects the Shipowners to provide the seafarer with the health/life insurance and insurance coverage against accidents/illness/death related to work but *while including the same in the employment agreement the Shipowners should carefully specify both ideas correctly*.

Compensation is no less important question. When we talk abount compensation in respect of disablement resulting from injury/illness or death of crew member it is needless to say that this is painful issue both for a sick/injured crew member or the relatives of the deceased and for an employer/Shipowner as well. As to the collective agreements they usually contain detailed scale of "degree of disability" against adequate "rates of compensation". Having *competent medical report* including statement of injured's (or sick person's) degree of disability it is easier for the Shipowner to see what amount of compensation is to be paid.

Another problem referring to the issue regarding compensation is that many of employment agreements concluded between the Shipowners and the seafarers do not specify the amounts of compensation to be paid in case of disablement or death. In these circumstances the Shipowners face the situation when they have to pay compensation but they do not know the extent of it. As a worse result the owners may be involved in legal proceedings as a respondent. In some jurisdictions the disabled persons or their relatives or relatives of a deceased person may have an opportunity to choose a legislation rather than governs the contract and which will be more effective for them (flag of a ship, registration of a Shipowner, own place of residence). Then the Shipowners may meet far more expenses than they could have born having a compensation clause indicated in the employment agreement. (For instance: an amount of compensation which the Shipowner will know only after the court takes a decision, legal fee of the lawyers from both sides and other possible legal costs such as law charge, other costs which may be fee of any specialists assisting the court to make a correct decision (doctors, surveyors etc) travelling expenses etc.). *It is needed to be said that the court usually decides for the employee.* The above mentioned undesirable losses will look more ridiculous if to say that *no deductible ever applies to compensation(as per Rules).*

A sick-pay. Subject to terms and conditions of a contact crew members are usually entitled to sick-pay in case he/she is signed-off due to illness or injury.

Sometimes the Shipowners erroneously believe that a sick-pay is the same as a compensation. This is not correct. Sick-pay refers to the expenses incurred by the Shipowners along with hospital, medical, funeral expenses as well as expenses of repatriating and sending a substitute.

Reporting

"In case of occurrence of an event provided for by the contract of insurance which may entail liability of the Insured the latter shall be obliged to notify the Insurer thereof immediately in writing".

Proper informing of the Insurer will allow the latter to undertake necessary steps for preventing or reducing any undesirable losses which may resulted from an occurrence. The failure to do so may have different consequences which may result in the additional costs for the Shipowner as well as rejection of the Insured's claim for reimbursement in whole or in part by the Insurer.

Timely informing enables the Insurer to undertake adequate measures to assist Members to prevent and reduce possible losses by their (Insurers') own means as well as by means of extensive network of P&I representatives all over the world.

It is not a secret that sometimes in appearance ordinary occurrence may result in quite serious expenses for the Shipowners. For instance: *transporting a sick/ill crew member by means of coast guard boat or helicopter or by passing boat, repatriation*. Prior to take a decision to apply to similar services *the Insureds should obtain the Insurers' approval*.