

## No. 14 - Paperless Trading - the Bolero Project

January 1999

Dear Sirs

### **PAPERLESS TRADING - THE BOLERO PROJECT**

The Association, in conjunction with other P&I Clubs in the International Group, has been reviewing progress on Bolero.

By way of background, Bolero intends to establish a technological environment in which paper bills of lading and other trade documentation may be replaced by electronic messages. The technological environment will be supported by a legal framework. It is envisaged that shipowners, charterers and other companies involved in international trade who wish to use Bolero will be parties to a contractual arrangement contained in a Bolero Rule Book.

The Clubs in the International Group are sympathetic to the aims of Bolero and the Group's Bills of Lading Sub-Committee has been following its development closely. As part of Bolero's consultation process a second draft of the Rule Book was received in September. We understand that a third draft of the Rule Book, which will contain more detail on the legal structure and a draft service contract will be available shortly. Accordingly, the Group is unable, at this stage, to take a view on Bolero in its final form.

A stated objective of Bolero is that it should have a neutral effect upon the legal results obtained by the existing paper methods of trading. If this objective can be achieved in the final version of the Bolero Rule Book, the cover available from the Association to its members will be unaffected. The International Group has identified some shipowners' liabilities which could arise under the present draft and which, whilst being of a P&I nature, would not arise under a paper transaction. The International Group has advised Bolero of its concerns and Bolero has responded positively to the International Group's comments.

Current Club Rules contain long established provisions and exclusions relating to the use and misuse of bills of lading and other documents. The Rules do not presently make reference to electronic contractual systems. To give effect to the objective of the Bolero project and to ensure that Club cover applies to liabilities arising under a Bolero transaction in exactly the same way as it does to those arising under paper transactions, and bearing in mind that the Bolero system will not be finalised until after the start of the next policy year, a special clause to be included in Certificates of Entry has been drafted by the Group's lawyers. This clause, set out below, will apply to all Certificates of Entry for the 1999 policy year. It excludes liabilities which arise under paperless trading systems such as Bolero but is qualified to provide cover for liabilities which would have arisen if a shipment had been made on the basis of conventional documentation.

Members should be aware that participation in a paperless trading system may also expose them to certain liabilities which are not of a traditional P&I nature. These may arise through shipowners who wish to participate in a scheme being required to be party to particular contractual arrangements under which they assume obligations necessary for the system to operate. Examples of such liabilities may be for breach of confidentiality undertakings or of obligations to maintain computer links. Members should be aware that, in so far as such risks are not of a traditional P&I nature, other arrangements may be required.

### **Paperless Trading Clause**

1. There shall be no recovery from the Association in respect of any liability, cost or expense whatsoever or howsoever arising, whether directly or indirectly, out of or in consequence of:
  - a. the Member's participation in, or use of, any system or contractual arrangement the predominant purpose of which is to replace paper-based documentation in shipping and/or international trade with electronic messages, including, without limitation, the Bolero system (any such system or arrangement being referred to in this endorsement as a paperless system), or
  - b. a document, created or transmitted under a paperless system, which contains or evidences a contract of carriage, or
  - c. the carriage of goods pursuant to such a contract of carriage,save to the extent that the Association may determine that such liability, cost or expense would have arisen and would have been covered by the Association if the Member had not participated in or used a paperless system and any contract of carriage had been contained in or evidenced by a paper document.
2. For the purpose of this clause a document shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically generated information.

If you would like further information or have any queries, please contact the Managers.

Yours faithfully

**The West of England Ship Owners  
Insurance Services Limited**  
(As Managers)

**R J B Searle**  
Director