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AUGUST 23, 2011

CIRCULAR NO. 23/11

TO MEMBERS OF THE ASSOCIATION

Dear Member:

INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996 (AS AMENDED SEPTEMBER 2011)

The Inter-Club New York Produce Exchange Agreement, which was first formulated and entered into by Clubs in 1970 (the ICA), provides a relatively simple mechanism whereby liability for cargo claims arising under New York Produce Exchange Form (NYPE) or Asbatime charterparties and / or contracts of carriage authorized under such charterparties, can be swiftly and fairly apportioned between owners and charterers. The purpose behind the development of the ICA was to avoid costly and protracted litigation.

The ICA, since its inception, has been amended on two occasions. The first amendment, in 1984, was to meet a particular shortcoming in regard to the time limit for making claims. The second, in 1996, while not deviating from the fundamental nature of the ICA, was more substantial and was introduced in particular to meet the needs of the container trade. It took the form of re-arranging the text in a more logical way, and:

(a) broadened the definition of what constituted a cargo claim under the ICA;

(b) included claims arising under through or combined transport bills of lading in certain defined circumstances;

(c) amended the time bar provision to cater for the possibility that the Hamburg Rules might apply to a cargo claim.

Following the 1996 amendment, the ICA was renamed the Inter-Club New York Produce Exchange Agreement 1996 (the 1996 Agreement).

Both the ICA and the 1996 Agreement have worked well, been widely adopted by the maritime industry and have achieved their purpose. However, clubs within the International Group of P&I Clubs (the Group) have recently expressed concern about the time and costs associated with dealing with issues of, and demands for, security as between owners and charterers under the 1996 Agreement and felt that a greater degree of co-operation between clubs (in the spirit of the 1996 Agreement), could substantially reduce such costs.

Clause (4) (c) of the 1996 Agreement provides:

> *"(4) Apportionment under this Agreement shall only be applied to Cargo Claims where .....*

(c) the claim has been properly settled or compromised and paid."

The Group has taken the view, which counsel has confirmed, that this provision makes payment of a cargo claim (as defined under clause (3) of the 1996 Agreement) a condition precedent to a right to indemnity. Accordingly, in the absence of payment, no accrued cause of action crystallises and there is therefore no right, prior to payment, for the party sued in respect of a cargo claim to require that the other party to the charterparty provide security (which could be sought by, for example, arresting or threatening to arrest a vessel or other property).

The Group believes that this situation is unsatisfactory and has led to unnecessary, wasteful and costly disputes between clubs. It has therefore taken a decision to incorporate a new provision into the 1996 Agreement so as to create an entitlement to security on the basis of reciprocity, once one of the parties to a charterparty has put up security in respect of a cargo claim, provided that the time limits set out in clause 6 of the 1996 Agreement have been complied with (the Security Provision).

The amended 1996 Agreement, which has been named the "Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011)" (the 2011 Agreement) is attached in track change and non-track change versions. The track changes record the amendments that have been made to the 1996 Agreement. The security provision has been incorporated into the 2011 Agreement as clause 9. As will be seen, it has also been necessary to make a number of additional consequential, but not substantive, amendments to the 1996 Agreement.

The 2011 Agreement will take effect from September 1, 2011. Contractually, the 2011 Agreement:

(a) will not, subject to (c) below, apply to charterparties entered into prior to September 1, 2011 or to claims arising under such charterparties whether such claims arise before or after September 1, 2011.

(b) will apply to charterparties entered into on or after September 1, 2011 and to claims arising under such charterparties if the 2011 Agreement is incorporated into such charterparties either by way of:

  (i) a specific reference to the "ICA 1996 (as amended September 2011)"; or

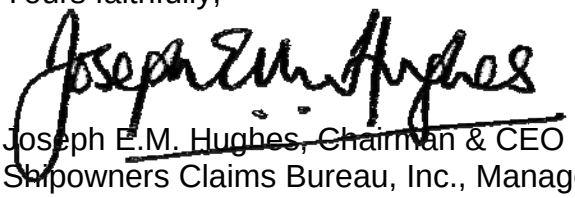
  (ii) if the charterparty contains a reference to the ICA 1996 'or any amendments thereto' or similar wording.

(c) can be incorporated into charterparties entered into before September 1, 2011 and to claims arising under such charterparties if the parties to such charterparties agree that it should e.g. by way of an addendum to the charterparty.

Notwithstanding the contractual application of the 2011 Agreement, as set out in the preceding paragraph, clubs will nevertheless, in accordance with the second paragraph of the preamble to the 2011 Agreement, recommend to their members that they apply the 2011 Agreement to all NYPE / Asbatime charterparties and claims arising under such charterparties whenever entered into and whether or not they incorporate the 1996 Agreement or the 2011 Agreement.

The Club recommends that members specifically incorporate the 2011 Agreement into NYPE and Asbatime charterparties entered into on or after September 1, 2011.

Yours faithfully,



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

All Group clubs have issued a similar circular.