

DECEMBER 17, 2001

CIRCULAR NO. 14/01

TO MEMBERS OF THE ASSOCIATION

Dear Member:

CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2002 POLICY YEAR

Please note that your Board of Directors recently approved the following changes to the Club's Rules to take effect from February 20, 2002.

As in previous years, they derive from a continuing review of the language of the existing Rules, amendments to the cover wordings of all Clubs initiated at International Group level and a desire to maintain good housekeeping in the interests of the clarity and efficacy of the terms under which Members are insured by the Club.

General insurance provisions

The revised terms of Rule 2, Section 3,2 as described below make the following language contained in Rule 1, Section 18 redundant. Accordingly, this wording will be deleted from the Rules for the forthcoming policy year.

“
..... ***The Member's right of indemnity hereunder shall not include any liability for loss, damage or expense arising from collision between the insured vessel and another vessel or craft, other than liability consequent on such collision***

1 ***for removal of obstructions under statutory powers;***

2 ***for damage to any dock, pier, jetty, harbor, breakwater, structure, beacon, buoy, lighthouse, cable or similar structures;***

3 ***in respect of the cargo of the insured vessel;***

4 ***for loss of life, personal injury and illness; and***

5 ***for the discharge or escape of oil or any other polluting substance.***”

The provision of bail or other security on behalf of Members

Since the current Rules are silent as to the Club's rights in regard to the provision of security on behalf of Members, the following new Section 23 to Rule 1 is intended to clarify those rights by way of explicit incorporation in the general conditions governing membership of the Club at large.

“**Section 23** ***The Association in its absolute discretion may, but shall in no case be obliged to, provide on behalf of a Member security to prevent the arrest or obtain the release from arrest or otherwise in respect of an insured vessel, and should it do so, the Member shall upon first demand made at any time by the Association in writing arrange such counter-security (which expression may in the Association's discretion include a deposit of cash with the Association) as the Association may require and (with or without such counter-security having been required or arranged) shall indemnify the Association against all liabilities and expenses incurred by the Association in consequence of the security originally provided by the Association.***”

In the event that a Member does not arrange such counter-security as may have been required or does not indemnify the Association as aforesaid, the Association, without prejudice to its other rights, shall be entitled to retain any and all amounts which would otherwise be recoverable by such Member, notwithstanding that the same may have no connection with the liability in respect of which the original security was provided and may relate to other periods of cover before or after that liability was incurred by the Member or to another insured vessel. The provision of security by the Association shall be without prejudice to the Association's liability to the Member for the claim in question."

Loss of life, injury and illness in respect of third parties in general

In order to make clearer the application of cover for claims for life salvage in respect of third parties who are not seamen, passengers or longshoremen/stevedores, the wording of Rule 2, Section 1,A will be amended to read as follows (additional wording and punctuation underlined).

"A Liability for life salvage in respect of, or loss of life of, or personal injury to, or illness of, any person, (other than the persons specified in paragraphs B, C and D of this Section) and hospital, medical or funeral expenses incurred in relation to such injury, illness or death."

Loss of life, injury and illness in respect of seamen

In order to make the description of the Club's crew cover more consonant with that typically afforded elsewhere in the industry, the current wording of Rule 2, Section 1,B will be replaced with the following language.

"B Liability for life salvage in respect of, or loss of life of, or personal injury to, or illness of, any seaman and hospital, medical or funeral expenses incurred in relation to such injury, illness or death.

- 1. Liability hereunder shall include liability arising ashore or afloat.***
- 2. For the purposes of this Rule 2, Section 1, B a seaman shall be defined as an employee of the Member:***
 - a who is the master or a member of the crew of the insured vessel; or***
 - b who is on board the insured vessel with the intention of becoming a member of her crew; or***
 - c who, in the event of the insured vessel being laid up and out of commission, is engaged in the upkeep, maintenance or watching of the insured vessel; or***
 - d who is engaged by the insured vessel or its master to perform stevedoring work in connection with the insured vessel's cargo at ports where contract stevedores are not readily available.***

PROVIDED that:

- i Where the liability arises, or the costs or expenses are incurred, under the terms of crew articles or other contract of service or employment and would not have arisen but for those terms, that liability shall not be covered by the Association unless and to the extent that those terms shall have been previously approved by the Association in writing.***

- ii There shall be no recovery in respect of liabilities, costs and expenses incurred by a Member in respect of the personal injury of a seaman under or pursuant to the terms of a contract of employment between the Member and that seaman, where that seaman has suffered injury while on leave, except where the claim on the Association is made under the entry of the last insured vessel on which the seaman served prior to suffering the injury.*

Loss of life, injury and illness in respect of longshoremen/stevedores

The wording of Rule 2, Section 1, C will be amended to read as follows (additional wording and punctuation underlined) so that as to make the language of the section consistent in meaning and scope with that used in related (and contiguous) sections of the same Rule.

“C Liability for life salvage in respect of, or loss of life of, or personal injury to, or illness of, any person engaged to handle the cargo of an insured vessel and hospital, medical or funeral expenses incurred in relation to such injury, illness or death.

- 1 Liability hereunder in connection with the handling of cargo for the insured vessel shall commence from the time of receipt by the Member of the cargo on dock or wharf, or on craft alongside, for loading, and shall continue until due delivery thereof to dock or wharf of discharge or until discharge from the insured vessel onto craft alongside;**
- 2 The Association shall not be liable for any loss, damage or expense sustained, directly or indirectly, by reason of any claim for loss of life, personal injury or illness in relation to the handling of cargo where such claim arises under a contract of indemnity between the Member and his subcontractor.”**

Loss of life, injury and illness in respect of passengers

In conformity with the changes made to Section 1, A, B and C above, the wording of Rule 2, Section 1, D, 1 will be amended to read as follows (additional wording and punctuation underlined).

“ D Liability to pay damages or compensation

- 1 for life salvage in respect of, or loss of life of, or personal injury to, or illness of, any passenger and hospital, medical or funeral expenses incurred in relation to such injury, illness or death.”**

In addition, the following language will be incorporated as an additional proviso to Rule 2, Section 1, D.

“ PROVIDED that:

- a For the purposes of Rule 2, Section 1, D, 2 above a casualty shall be defined as an incident involving either:**
 - i collision, stranding, explosion, fire or other cause affecting the physical condition of the insured vessel so as to render it incapable of safe navigation to its intended destination; or**
 - ii a threat to the life, health or safety of passengers.”**

The current provisos to Rule 2, Section 1, D will follow the new proviso above as paragraphs b, c and d respectively.

The latter change reflects a clarification of Group cover in general in regard to passenger ship casualties following extensive discussion among Club Managers over the past several months. An amendment to the Group's Pooling Agreement is also to be made to mirror this change to underlying cover, but probably not until 2003.

Collision

In order to clarify the scope of collision cover afforded by the Club, the current wording of Rule 2, Section 3 will be replaced with the following language.

“Section 3

COLLISION

Liability for loss or damage as set out in paragraphs 1, 2 and 3 below which arises from collision of the insured vessel with another ship or vessel, but only if and to the extent that such liability is not covered by the hull insurances of the insured vessel:

- 1** ***one fourth, or such other proportion as may have been agreed, of the liabilities arising out of the collision other than those set out in paragraph 2 below;***
- 2** ***four-fourths of the liabilities arising out of the collision in consequence of, or in respect to:***
 - (a)** ***removal or disposal of obstructions, wrecks or their cargoes under statutory powers or otherwise pursuant to law;***
 - (b)** ***injury to real or personal property of every description;***
 - (c)** ***the discharge, spillage, emission or leakage of oil, petroleum products, chemicals or other substances of any kind or description whatsoever;***
 - (d)** ***cargo or other property on or the engagements of the insured vessel;***
 - (e)** ***loss of life, personal injury or illness;***
- 3** ***that part of the Member’s liability arising out of the collision which exceeds the sums recoverable under the hull policies of the insured vessel solely by reason of the fact that the liability exceeds the hull insurance value.***

PROVIDED always that:

- i** ***For the purpose of determining any sum recoverable under this Section 3, the Association shall be entitled to determine the proper value at which the insured vessel should have been insured under the hull policies and the Association shall only be liable for the excess (if any) above the amount which would have been recoverable under the hull policies had the insured vessel been insured thereunder at such value. For the purpose of this Section 3 “proper value” is defined as an amount equal to the free, uncommitted market value of the insured vessel at the time of the collision.***
- ii** ***Coverage hereunder shall not extend to any liability, whether direct or indirect, in respect of the engagements of, or the detention or loss of time of, the insured vessel.***
- iii** ***Claims hereunder shall be settled on the principles of cross-liabilities.***
- iv** ***Where both vessels are insured vessels and are the property, in part or in whole, of the same owners or charterers, claims hereunder shall be settled on the basis of the principles set forth in the collision clauses contained in the hull policies of those insured vessels.***

- v ***Claims hereunder shall be separated among and take the identity of the several classes of liability for loss, damage and expense enumerated in this Rule and each class shall be subject to the deductions, inclusions, exclusions and special conditions applicable in respect to such class.***
- vi ***Notwithstanding the foregoing, the Association shall not be liable for any claims hereunder where the various liabilities resulting from such collision, or any of them, have been compromised, settled or adjusted without the written consent of the Association.***
- vii ***In every case where the insured vessel is a tug, the hull policy thereof shall be deemed to be written on the American Institute Tug Form, August 1, 1976 and this Section 3 shall be deemed to incorporate the collision clause contained in the said policy and the following clause shall be substituted for and supersede subsection 4 of Rule 3, Section 1 namely:***

Loss of or damage to any vessel or vessels in tow and/or their cargoes, whether such loss or damage occurs before, during or after actual towage; provided, that this exception shall not apply to claims under Section 1 of Rule 2.”

The new wording in Section 3, 2 reflects the terms of the collision liability clause in the American Institute Hull Form (6.2.77).

Fines and penalties

In order to clarify its intention, and the scope of cover it provides, Rule 2, Section 8, 3 and Section 8, 4 will be amended to read as follows (additional wording underlined).

“3 ***the accidental escape or discharge of oil or any other substance from an insured vessel, provided that the Member is insured for pollution liability by the Association, and subject to the applicable limit of liability under the Rules of the Association and/or the terms of entry;***

4 ***smuggling by the master or members of the crew, provided that the Member upon becoming aware of such activity immediately notifies the Association.***

All other fines and penalties will be recoverable only under Rule 2, Section 19, provided that....”

Discharge of oil or other substance

The preamble to Rule 2, Section 13 will be amended to read as follows (additional punctuation underlined).

“Section 13 ***DISCHARGE OF OIL OR OTHER SUBSTANCE***

Liabilities, costs and expenses that are the result of the discharge or escape of oil or any other polluting substance, or the threat of such discharge or escape, from an insured vessel, namely....”

This is intended to clarify the intention of the Rule that cover in regard to the threat of the escape of oil or any other polluting substance is in complete and equivalent apposition to that available in regard to the actual escape of oil or such other polluting substances.

Risks excluded

Rule 3, Section 1, 2 will be amended to read as follows (additional wording underlined):

“2 Cancellation or breach of any charter or contract, detention of the vessel, bad debts, insolvency, fraud of agents, loss of freight, passage money, hire demurrage or any other loss of revenue incurred by the Member in respect of any vessel insured by the Member;”

This is intended to make clear that the exclusion of cover contained in the Rule applies not just to the particular vessel in respect of which a principal claim may have arisen, but also to any other vessels which may be insured by the Member and which may have suffered economic loss not amounting to a true “third party” claim in the ordinary sense of the expression. Such an amendment would also bring the Club’s cover more precisely in line with that characteristically afforded elsewhere in the industry.

CERCLA-type liabilities

It will be recalled that, last year, the International Group of P&I Clubs resolved that a unified approach be adopted in relation to liabilities arising under the U.S. Comprehensive Environmental Response, Compensation, and Liability Act, 1980 (CERCLA), as well as similar legislation elsewhere, in respect of claims for contamination from landfill sites in which waste originating from ships had been dumped. The approach entailed that there should be no cover as of right for this risk and that cover should be afforded only at the discretion of individual Club Boards and/or Committees.

It was originally intended that this amendment to cover should apply as of February 20, 2001 but, for a variety of technical reasons, the Group decided at the last minute to postpone the general application of the new regime until the next renewal i.e. as of February 2002.

The change indicated below, being a new subsection 17 to Rule 3, Section 1, will therefore be incorporated in the new Rules as of next February.

“17 Unless the Directors shall otherwise determine, there is no cover in respect of any liability for loss, damage, costs and expenses arising as a consequence of the discharge or escape, or the threat of discharge or escape, of any hazardous waste (previously carried on the vessel) from any land-based dump, storage or disposal facility.”

Termination of cover due to non-payment of premium or other sums owing to the Club

In order to clarify both the circumstances in which notice of termination may be given and its effects, the current wording of Rule 5, Section 2, a and b will be replaced with the following language.

“2 Should the Member fail to pay, either in whole or in part, any amount due from the Member to the Association (including any amount for which the Member may be jointly and severally liable to the Association), the Association may give the Member notice in writing requiring the Member to pay such amount by any date specified in such notice, not being less than five days from the date on which such notice is given. In the event that the Member fails to make payment in full on or before the date so specified, the insurance of the Member (whether or not such insurance may already have ceased for any other reason) in respect of any and all vessels insured for account or on behalf of the Member shall be terminated immediately without further notice or other formality.

In the event that a Member’s insurance is terminated by reason of the foregoing, the time of the occurrence of which being hereinafter referred to as “the date of termination”, the following consequences shall ensue:

- a. The Association shall in all cases have power in accordance with Rule 4, Section 5 to charge Release Calls in regard to any and all vessels insured for account or on behalf of the Member, notwithstanding the payment of which (or the establishment of bank guarantees or other security in lieu thereof), the Member shall be and remain liable for Overspill Calls in accordance with Rule 4, Section 10 as well as for all premiums, calls, contributions and any other amount due from the Member to the Association;**

- b. **The Association shall with effect from the date of termination cease to be liable for any claims of whatsoever nature and howsoever arising under these Rules in respect of any and all vessels in relation to which the insurance of the Member has been terminated, irrespective of whether:**
- i. **such claims have arisen by reason of any event which has occurred at any time prior to the date of termination, including during previous years;**
 - ii. **such claims arise by reason of any event occurring after the date of termination;**
 - iii. **the Association may have admitted liability for or appointed attorneys, surveyors or any other person to deal with such claims; or**
 - iv. **the Association at the date of or prior to the date of termination knew that such claims might or would arise;**

and as from the date of termination any liability of the Association for such claims shall cease retroactively and the Association shall be under no liability to the Member for any such claims or on any account whatsoever;

PROVIDED ALWAYS that:

The Association may in its absolute discretion and upon such terms as it thinks fit, including but not limited to terms as to payment of contributions, premiums or other sums, admit either in whole or in part any claim in respect of a vessel insured by the Member for which the Association is under no liability by virtue of this Rule, whether such claim has arisen before or arises after the date of termination as the case may be, or forgive wholly or partly any payment of contribution, premiums or other sums due to the Association.”

Jurisdiction regarding claims made by the Association against a Member

The following paragraph will be added to the end of Rule 1, Section 15:

“PROVIDED ALWAYS that:

And without prejudice to the foregoing, the Association shall be entitled to commence and maintain in any jurisdiction whatsoever any action to recover amounts which the Association may consider to be due to it from the Member”.

The purpose of this change is to clarify the Club’s extra-territorial jurisdictional rights to recover sums due to the Club from a Member.

The amendments and additions described above will be incorporated in the Club’s new By-Laws and Rules for 2002, which will be made available to Members as soon as possible.

If, in the meantime, any Member has questions in regard to the foregoing, the Managers will be pleased to respond.

Yours faithfully,

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

THE AMERICAN CLUB