



**JANUARY 3, 2008**

**CIRCULAR NO. 01/08**

**TO MEMBERS OF THE ASSOCIATION**

**Dear Member:**

**CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2008 POLICY YEAR**

Please note that your Board of Directors has approved the following changes to the Club's Rules to take effect from February 20, 2008.

As in previous years, they derive from a continuing review of the language of the existing Rules and a desire to maintain good housekeeping in the interests of the clarity and efficacy of the terms on which Members are insured by the Club.

The changes are set out in the order in which current Rules appear in the Rule Book.

**Class I – Protection and Indemnity Insurance**

**Interpretation**

The limits on cover for claims in respect of passengers and crew, originally introduced as of February 20, 2007, will be formally incorporated in the Rules (rather than by way of endorsement to individual Certificates of Entry) with effect from February 20, 2008.

This will entail the following amendments to the definitions of "passenger" and "seaman" in the present Rules (Class I, Rule 1, Section 2):

***Passenger***      ***A person carried on board an insured vessel under a contract of carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract for the carriage of goods.***

***Seaman***        ***An employee of a Member falling within the categories of person set out in Rule 2.1.B or, solely and exclusively for purposes of the interpretation of Rule 1.4.34, any person on board an insured vessel who is not a passenger.***

## General Limitations

Concomitantly, the new limits will be formally incorporated in the Rules for 2008 through the addition of the following language as a new Class I, Rule 1.4.34, the current and subsequent sub-sections being renumbered accordingly.

**34 Unless otherwise limited to a lesser sum, the Association's aggregate liability arising under any one Member's entry shall not exceed**

**(1) in respect of liability to Passengers US\$2,000,000,000 any one accident or occurrence; and**

**(2) in respect of liability to Passengers and Seamen US\$3,000,000,000 any one accident or occurrence.**

**Provided always that:**

**Where there is more than one Member's entry in respect of the same insured vessel in the Association and/or as provided by any other insurer which participates in the Pooling Agreement**

**(a) the aggregate of claims in respect of liability to Passengers recoverable from the Association and/or such other insurers shall not exceed US\$2,000,000,000 any accident or occurrence and the liability of the Association shall be limited to such proportion of that sum as the claims recoverable by such persons from the Association bear to the aggregate of all such claims otherwise recoverable from the Association and all such other insurers;**

**(b) the aggregate of all claims in respect of liability to Passengers and Seamen recoverable from the Association and/or such other insurers shall not exceed US\$3,000,000,000 any one accident or occurrence and the liability of the Association shall be limited:**

- (i) *where claims in respect of liability to Passengers have been limited to US\$2,000,000,000 in accordance with proviso (a) to such proportion of the balance of US\$1,000,000,000 as the claims recoverable by such persons in respect of liability to Seamen bear to the aggregate of all such claims otherwise recoverable from the Association and all such other insurers; and*
- (ii) *in all other cases, to such proportion of US\$3,000,000,000 as the claims recoverable by such persons in respect of liability to Passengers and Seamen bear to the aggregate of all such claims otherwise recoverable from the Association and all such other insurers.*

## Disputes

A modification to the current Class I, Rule 1.4.45 (to be renumbered Rule 1.4.46 in light of the addition of the new section above) will be incorporated as follows, the additional language being underlined:

**46** *If any difference or dispute shall arise between a Member and the Association and/or its agents [which shall include, without limitation, the Association's and the Managers' directors, officers and employees] concerning the construction of these Rules, or the insurance afforded by the Association under these Rules, or any amount due from the Association to the Member, such difference or dispute shall in the first instance be referred to the Association's Directors. Such reference shall be on written submissions only. No Member shall be entitled to maintain any action, suit or other legal proceedings against the Association and/or its agents upon any such difference or dispute and until the same has been referred to the Association's Directors and they shall have:*

- i. given their decision thereto; or*

- ii. ***given notice to the Member that they do not wish to adjudicate upon such difference or dispute; or***
- iii. ***been in default for three months in doing either of the above.***

***Any such suit against the Association and/or its agents shall be brought in the United States District Court for the Southern District of New York. In no event shall suit on any claim be maintainable against the Association and/or its agents unless commenced within two years after the loss, damage or expense resulting from liabilities, risks, events, occurrences and expenditures specified under this Rule shall have been paid by the Member.***

In addition, to allow for the recovery of costs in addition to amounts due to the Club from Members, the current Class I, Rule 1, Section 4.46 will be recast into two sections as follows, and renumbered Rule 1.1.47 in light of the new sub-section 34 set out above:

***47 a Provided always that, and without prejudice to the foregoing or the terms of Rule 1.4.49 below, the Association shall be entitled to commence and maintain in any jurisdiction whatsoever any action to recover any amounts which the Association may consider to be due to it from the Member.***

***b The amounts due to the Association from a defaulting Member shall include, but not be limited to, unpaid premiums and assessments plus the Association's reasonable legal fees, collection expenses and other costs of recovering all amounts due from a Member or former Member plus interest at 9% per annum or such higher or lower rate of interest as may be lawful in the jurisdiction in which the action is commenced.***

## **Repatriation and Substitute Expenses**

In order to bring the Club's practice more in line with that found elsewhere in the industry, a modification to the wording of Class I, Rule 2, Section 2 will be made as follows, the amendments being underlined:

**Section 2**      **REPATRIATION AND SUBSTITUTE EXPENSES**

***Liability for expenses reasonably incurred in necessarily repatriating any member of the crew or any other person employed on board the insured vessel, or in necessarily sending a substitute to replace any member of the crew or any person employed on board the insured vessel; provided, however, that the Member shall not be entitled to recover any such expenses incurred by reason of the expiration of the shipping agreement, other than sea perils, or by the voluntary termination of the agreement. Wages shall be recoverable hereunder only when payable under statutory obligation during unemployment due to the wreck or loss of the insured vessel.***

**Diversion Expenses**

For the same reason, a modification to the wording in Class I, Rule 2, Section II will be made as follows, the changes being underlined:

**Section 11**      **DIVERSION EXPENSES**

***Liability for expenses incurred solely for the purpose of putting in to land an injured or sick seaman or passenger, or for putting in to land stowaways or refugees or for saving life at sea; and the net loss to the Member in respect of bunkers, insurance, stores and provisions as the result of the diversion.***

**Association Funding: Premiums and Calls**

In light of the recent settlement of the Declaratory Judgment Action, Class I, Rule 4, Section 6 will be modified so as to delete the words "***which commenced on or after February 20, 1989***". Accordingly, the revised Rule will read, in its entirety, as follows:

***6 If at any time or times after any policy year has been closed, any additional costs or expenses attributable to such policy year(s) are incurred by the Association, the Directors may in their absolute discretion decide to fund such costs or expenses:***



- i by transferring funds from the reserves of the Association; and/or*
- ii by levying interim or final supplementary premium in respect to any open policy year(s).*

**Class II: Freight, Demurrage and Defense Insurance**

The amendments set out above will also be formally incorporated into, and form an integral part of, the Rules of Class II to the extent that they are consistent with the subject and context of the said Rules of Class II.

**Class III: Insurance For Charterers' Risks**

The amendments set out above will also be formally incorporated into, and form an integral part of, the Rules of Class III to the extent that they are consistent with the subject and context of the said Rules of Class III.

There are a few very small typographical errors related to the renumbering of Rule sections and sub-sections in earlier years which will also be corrected in the forthcoming edition of the Rule Book for 2008.

It is hoped that the foregoing changes are clear, but if any Member requires any further explanation or comment, the Managers will be happy to respond.

Yours faithfully,

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