AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC.

THE AMERICAN CLUB

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TO MEMBERS OF THE ASSOCIATION

Dear Member:

TANKER CHARTERPARTIES: OIL POLLUTION ADDENDUM

It has recently been brought to your Managers' attention that certain major oil companies are attempting to reintroduce contract wordings based on the language of the old TOVALOP charterparty clause.

Such clauses empower the charterer to take steps to prevent or minimize pollution from a chartered tanker on behalf of the owner, and at the latter's expense. They may obligate the owner to pay expenses in relation both to clean-up and threat-removal which may not be recoverable from the Club.

Members were notified – in November 1996 – of the impending termination, at the then subsequent renewal, of the TOVALOP Agreement. Members were also informed that TOVALOP charterparty clauses would no longer be acceptable as of February 20, 1997.

The old TOVALOP clause as recommended by the clubs contained an owner's warranty to the effect that relevant vessel(s) were participating tankers in TOVALOP and gave the charterer the right, in certain circumstances, to take measures at the owner's expense in response to an oil spill – or threat thereof – from such tanker.

This right of the charterer was consistent with the purpose and aims of the entire voluntary compensation system set up by the TOVALOP and CRISTAL Agreements. Accordingly, on the termination of the TOVALOP Agreement, it was no longer appropriate for the charterer to have such an express right, it being incompatible with several of the provisions of the Civil Liability Convention, 1969, the Fund Convention, 1971 and the protocols effective in respect of both.

The clauses currently proposed by certain oil majors would have the effect of allowing a charterer to circumvent the provisions of the Convention on Civil Liability for Oil Pollution, 1992 (CLC). In accordance with this convention, claimants, including the charterer, have a right of recovery against the owner for pollution claims (including the cost of preventative or clean-up measures) subject to certain constraints. If the total of acceptable claims exceeds the CLC limitation figure, the compensation received by claimants will be reduced proportionately. In the meantime, payment to claimants may be delayed pending the establishment of the total of acceptable claims. However, the offending clauses entitle the charterer to obtain a full and immediate reimbursement of expenses regardless of what the total of all CLC claims may be.

Moreover, while the owner's liability under CLC is always limited in financial terms, no such proviso is included in the clauses to which attention is now being drawn. While some clauses state that their provisions are not in derogation of other rights the charterer or owner may otherwise have or acquire

by law or by virtue of international convention, the wordings in question are somewhat opaque and may not be sufficient to limit the owner's liability to the charterer.

Members are reminded that Club Rules provide that an owner should not assume responsibility under contract for claims in respect of which, under applicable law, he would otherwise be entitled to limit liability – see Class I, Rule 1, Section 4, Sub-section 31. Accordingly, should an owner be liable under such a clause for expenditure greater than the amount recoverable under CLC, the excess amount may not be recoverable from the Club.

As might be surmised, the Club recommends that Members do not accept these clauses. However, there should be no objection to Members allowing charterers to take preventative measures at their own expense, or to Members confirming that they will remain members of ITOPF. An alternative clause – approved by the International Group of P&I Clubs – including these provisions is attached herewith. It also makes clear that, if there is a requirement under applicable law for the provision of a Certificate of Entry in a P&I club, this is to be provided by the owner, not the charterer. In addition to its approval by International Group clubs, it is also supported by BIMCO and INTERTANKO.

Should any Member have any questions as to the foregoing, the attached or in general, the Managers will, as always, be pleased to respond.

Yours faithfully,

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

Oil Pollution Clause

1. Owners undertake:

   (a) that the Vessel will throughout the period of this charter be owned by a member of the International Tanker Owners Pollution Federation Limited: and,

   (b) that they will provide a Certificate of Entry in a P&I Club for production on board the vessel if required under applicable law or by the relevant authorities.

2. When there is an actual or threatened escape or discharge of Oil from the vessel which causes Pollution Damage or which creates a grave and imminent danger of such Damage, Charterers shall upon notice to the Owners or Master have the right (but not the obligation) if permitted under applicable law and by the relevant authorities, to

   (a) place a representative on board the Vessel to observe the measures being taken to prevent or minimize Pollution Damage; and,

   (b) provide advice, equipment or manpower and undertake such other measures as are reasonably necessary to prevent or minimize such Pollution Damage, at Charterers' risk and expense and subject to the approval of the Owners (which shall not be unreasonably withheld).

3. Nothing in this clause shall prejudice Owners' or Charterers' rights to claim compensation under any applicable law.

4. For the purposes of this Clause, the meaning of the terms "Oil" and "Pollution Damage" shall be as defined in the *International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992*, except where Pollution Damage takes place within the territory of a state which is party to CLC 1969, when the meaning shall be as defined in CLC 1969.