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CIRCULAR NO. 4/05

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TO MEMBERS OF THE ASSOCIATION AND LAWYERS ACTING ON MEMBERS' AND THE ASSOCIATION'S BEHALF

Dear Member:

INSTRUCTIONS TO COUNSEL

The Managers wish to alert both Members and the Club's legal correspondents that, with immediate effect, the following standardized instructions are to apply to the provision of legal services in connection with any matter covered under Class I (P&I), Class II (FD&D) or Class III (Charterers' P&I / FD&D).

By use of this proposed set of instructions to counsel, it is hoped that a clear and detailed analysis of the merits, or lack thereof, of the claims and/or defenses at issue at an early stage of a matter's existence will be available to the Managers. This mechanism will further enable them to better assess the potential exposure and expense to the Club and its Member (in the context of Class I and Class III matters), or to ascertain the scope and extent of support that the Club should provide (in the context of Class II matters).

- 1) A brief advice on the merits of the Member's case, including an assessment of the Member's likelihood of success and recovery in regard to his claims, and/or the probability of success in establishing the Member's defense(s) as to any claims asserted against him. References to any applicable statutes, regulations and/or noteworthy court decisions or arbitration decisions should also be cited in such an opinion.
- 2) A summary of the procedural steps that would have to be undertaken in court or in arbitration if the claims / defenses were to be litigated. Such summary should include a rundown of the scope of discovery required, the type of information that would need to be requested or produced, the need for any depositions, witness statements, interviews etc., any pre-trial, preliminary applications or other non-dispositive motions; the feasibility and the likelihood of success in making any such motions, the need for the retention of any non-testifying and/or testifying experts, and estimated trial time. For each such item listed above, counsel should provide an estimate of anticipated fees and costs.
- 3) Counsel should then provide the Managers with a global estimate of the fees / costs associated with the claims so that an appropriate reserve can be entered and a budget agreed.
- 4) Counsel should also obtain the consent or authority of the Managers when each such stage of the litigation begins. Furthermore, if there is a proposed alteration or amendment to the original estimate for any such stage, counsel must advise the Managers in writing of such a proposed change and no work is to be performed until counsel has obtained the requisite authority from the Managers.
- 5) Appointment of experts, counsel or other third-parties must be approved in advance by the Managers.
- 6) Extraordinary disbursements must be approved in advance by the Managers.



- 7) In its opinion letter, counsel must also advise the Managers as to the identity of all individuals needed to provide the anticipated legal services, i.e. number of attorneys, paralegals, etc. and each such individual's hourly billing rates must also be included. Such rates must be agreed to with the Managers prior to the issuance of the initial opinion letter.
- 8) Counsel is reminded that any and all invoices issued in connection with any claims under Class I, Class II or Class III must comply with Circular 2/05 as of January 25, 2005 on invoice requirements.
- 9) Timely and accurate reporting to the Managers of significant developments ultimately affecting the Member's prospects of success or the Member's liability is a continuing obligation of the parties engaged to assist in the resolution of the matter.

Yours faithfully,

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

THE AMERICAN CLUB