



JANUARY 5, 2010

CIRCULAR NO. 01/10

TO MEMBERS OF THE ASSOCIATION

Dear Member:

**CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2010 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, 2010.

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 (Rule 1.2)**

A new definition in Rule 1.2 will be added as follows:

***Contract of Insurance***

***The contract of insurance between the Member and the Association includes the provisions of the Certificate of Entry and any endorsements thereto issued by the Association's Managers to the Member and the provisions of the Association's By-Laws and Rules in effect as of the date the Certificate of Entry was issued.***

*This new definition is intended to clarify the identity of the contract of insurance between the Member and the Association in a manner consolidating the currently various references to that contract contained in the present Rules.*

**Members, Joint Members, Affiliates and Co-Assureds (Rule 1.3)**

Rule 1.3.4 (Membership) will be amended to read as follows:

- 4** ***All contracts of insurance effected by the Association shall, save and insofar as they shall contain any special terms inconsistent with that part of the insurance contract contained in these Rules, be deemed to incorporate all of the provisions of these Rules and the Association's By-Laws.***

***All contracts of insurance effected by the Association shall be deemed to have been issued in New York.***

*This is intended to create greater consistency of approach in the definition of relevant contracts in conjunction with the express definition thereof as set out above.*



The Rule 1.3.14 (Joint Members, Co-assureds and Affiliates) will be amended to read as follows:

- 14** *Joint Members, Co-assureds (except those granted only misdirected arrow coverage under Rule 1.3.10), and Affiliates insured on any one insurance or in respect of any fleet as defined in Rule 1.2 above, shall be jointly and severally liable for all sums due to the Association in respect of such insurance or such fleet, always provided that nothing stated herein shall be construed as a waiver of any of the Association's rights under the contract of insurance.*

*This amendment is intended to regularize the treatment of parties granted only misdirected arrow coverage as to their liability for premium and calls, but also makes clear that there is no intention of waiving any of the Association's rights under the insurance contract in regard thereto, or generally.*

#### **General Insurance Provisions (Rule 1.4)**

The Rule 1.4.23 (Powers of the Managers in Regard to Claims) will be amended to read as follows:

- 23** *If a Member does not settle, compromise or dispose of a claim or legal or other proceedings after being required to do so by the Managers in accordance with Rule 1.4.22 above, any eventual recovery by the Member from the Association in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Managers.*

*This amendment is intended to ensure that the first two lines of this subsection more closely track the language of Rule 1.4.22.*

The Rule 1.4.26 b (Time Bar) will be amended to read as follows:

- b** *Without prejudice to paragraph (a) of this Rule, in no event shall any claim be recoverable from the Association unless written notice thereof has been given to the Managers within two years after the Member knew or ought to have known of the happening, occurrence, event or matter giving rise to the claims. In so far as there may be any difference of opinion between the Member and the Managers as to whether the Member knew or ought to have known of such happening, occurrence, event or matter giving rise to the claim as aforesaid, the determination of the Managers shall be final.*

*This amendment shortens the current three year provision to two years.*

The Rule 1.4.37 (currently under General Limitations) will be amended to read as follows:

#### **Association Rights**

- 37** *No act, omission, course of dealing, forbearance, delay or indulgence by the Association in enforcing any of the terms of the contract of insurance issued to the Member by the Association shall prejudice or affect the rights and remedies of the Association under the contract of insurance, and no such occurrence shall be treated as any evidence of waiver of the Association's rights thereunder or result in any form of estoppel as to such rights and remedies, nor shall any waiver of a breach by the Member of such contract operate as a waiver or estoppel with respect to any subsequent breach thereof. The Association shall at all times and without notice be entitled to insist on the strict application and enforcement of all of the terms of the contract of insurance it issued to the Member.*

*This amendment follows from the addition of terms expressly defining the insurance contract as set out above. It also contains anti-estoppel language.*

The Rule 1.4.38 (Provision of Security) will be amended to read as follows:

- 38** *The Association may, but shall in no case be obligated to, provide on behalf of a Member security to prevent the arrest or attachment or obtain the release from arrest or attachment or any other form of restraint or detention in respect of an insured vessel or the Member's other property or assets or funds. Should the Association do so, the security shall be provided on such terms as the Managers in their absolute discretion deem appropriate, and the Member shall upon first demand made at any time by the Managers in writing arrange such countersecurity (which countersecurity may in the Managers' absolute discretion include a deposit of cash with the Association) as the Managers may require, and (with or without such countersecurity having been required or arranged) the Member shall promptly indemnify the Association in consequence of any security provided by the Association.*

*Given US maritime attachment law, including Rule B, which, although recently weakened, still exists, the purpose of this amendment is to deal not only with vessel arrests, but also with the attachment of Members' other property, assets and funds. The amendment is intended to clarify the point that, as with vessel arrests, the Association may, but is not obligated to, provide security to prevent the attachment, or obtain the release, of the Member's other property, assets or funds.*

A new section (a) will be added to Rule 1.4.48 (currently Disputes, henceforward Claims Against Members), the present sections (a) and (b) therein being reordered as sections (c) and (d):

- a** *The Member hereby submits to the jurisdiction of the United States District Court for the Southern District of New York in respect of any suit brought by the Association to recover any sums which the Association may consider to be due to it from the Member.*

*The purpose of this new section is to enhance the Association's capabilities in the recovery of sums from recalcitrant Members and former Members in line with similar provisions relating to the jurisdiction, for example, of the High Court of Justice of England in the case of other clubs.*

The Rule 1.4.49 (Applicable Law) will be amended to read as follows:

- 49** *The contract of insurance between the Association and a Member shall be governed by and construed in accordance with the law of the State of New York. This provision is not, in any way, to be construed as a waiver of any rights, claims or defenses available to the Association under any contract term, including, but not limited to, that part of the contract included in Rule 1.4.48.*

*This amendment is intended to promote consistency with the definition of the contract of insurance as set out above.*

The Rule 1.4.50 (Maritime Lien) will be amended to read as follows:

- 50** *The Association shall have a lien on the insured vessel under the contract of insurance and/or applicable law for all premium and all other sums of whatsoever nature due to it. Such lien shall extend to other insured vessels which are part of a fleet as defined in Rule 1.2 and shall be in addition to, and in*



***no way may be construed as a waiver of, or amendment to, any other contractual or maritime lien which the Association may either expressly or impliedly possess in regard to the said insured vessel or vessels. Such lien shall apply notwithstanding that the cover of the Member in respect of any vessel insured by him with the Association may have ceased or been terminated.***

*Again, this amendment is intended to promote consistency with the definition of the contract of insurance as set out above.*

The Rule 1.4.51 (Delegation) will be amended to read as follows:

**51** ***Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of the contract of insurance, such power, duty or discretion may, subject to any terms, conditions or restrictions contained in the contract, be exercised by any one or more of the Managers or by any servant or agent of the Managers to whom the same shall have been delegated or sub-delegated.***

*Again, this amendment is intended to promote consistency with the definition of the contract of insurance as set out above.*

The Rule 1.4.52 (Delegation) will be amended to read as follows:

**52** ***Whenever any power, duty or discretion is stated in the contract of insurance to be vested in the Directors, such power, duty or discretion shall be exercisable by the Directors unless the same shall have been delegated to any Committee of the Directors or to the Managers in accordance with the provisions as regards delegation contained in the By-Laws, in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated.***

*Again, this amendment is intended to promote consistency with the definition of the contract of insurance as set out above.*

The Rule 1.4.53 (Members and Successors Bound by Rules) will be amended so as to comprise its second sentence only, as follows:

**53** ***A Member or other person by whom or on whose behalf an application is made for insurance or reinsurance by the Association shall be deemed to have agreed not only on his own behalf but also on behalf of his successors and each of them that both he and they will in every respect be subject to and bound by all of the provisions of the Member's contract of insurance with the Association.***

*This amendment is to be read in conjunction with the amendment to Rule 1.3.4 above, the first sentence of the subsection as currently drafted being more appropriately placed in substitution for the current Rule 1.3.4.*

### **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 2010.

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**