



DECEMBER 20, 2012

CIRCULAR NO. 38/12

TO MEMBERS OF THE ASSOCIATION

Dear Member:

CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2013 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, 2013.

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

General Provisions (Rule 1) – Amendment to incorporate repatriation liabilities under MLC 2006

In light of the Board's decision to incorporate repatriation liabilities under the Maritime Labor Convention (MLC) 2006, a decision shared by the other clubs in the International Group, the current Class I, Rule 1, Section 4.29 will be amended to read as follows:

29. Notwithstanding the provisions of Rule 1.4.28 above and of the first (introductory, unnumbered) paragraph of Rule 2 below, where a Member shall have failed to discharge a legal liability to pay damages or compensation for personal injury, illness, death or repatriation of a seaman, the Association shall discharge or pay such claim on the Member's behalf directly to such seaman or to the legal dependant thereof.

PROVIDED ALWAYS THAT:

- a. The seaman or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated; and***
- b. Subject to (c) below, the amount payable by the Association shall under no circumstances exceed the amount which the Member would have been able to recover from the Association under the Rules and the Member's terms of insurance with the Association; and***
- c. Where the Association is under no liability to the Member in respect of such claim in accordance with Rule 5.1.2.b by reason of cesser of cover for non-payment of amounts due to the Association, the Association will nevertheless discharge or pay that claim to the extent only that it solely***

arises from a happening, occurrence, event or matter occurring prior to the date of the cesser; and

- d. This Rule shall apply only to claims by or regarding a seaman employed on an entered vessel and to the personal injury, illness, death or repatriation of such seaman solely arising from a happening, occurrence, event or matter occurring at or after noon GMT, February 20, 2013; and*
- e. The Association's agreement to discharge or pay Members' liabilities regarding repatriation of seamen is applicable only to such liabilities in states which implement or otherwise give effect to the 2006 Maritime Labor Convention; and*
- f. Any payment by the Association to a seaman or dependant shall be as agent of the Member and the Member shall be liable to and agrees to reimburse the Association for the full amount of such payment.*

General Provisions (Rule 1) – Athens Convention and the PLR

As outlined in several recent Club circulars on the subject, the regulation of passenger liabilities in the European Union will come into effect on December 31, 2012 under the terms of the PLR (as it is generally known) which reflects, and gives effect to, key provisions of the Athens Convention. This could entail monetary exposure, by reason of providing non-war certificates under the relevant regulation, in excess of the aggregate limit of Club cover as defined in Class I, Rule 1, Section 4.35.

In order to take account of such an eventuality, a new Class I, Rule 1, Section 4.36 will be incorporated in next year's Rules, as follows:

36. If liabilities to passengers arising under a non-war certificate issued by the Club in compliance with either Article IV of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 as amended by the Protocol thereto of 2002 or Regulation (EC) No.392/2009 of the European Parliament and of the Council of 23^d April 2009 on the liability of carriers of passengers by sea in the event of accidents ("Athens Convention/EU/EEA Passenger Liabilities") exceed or may exceed in the aggregate the limit of cover specified in Rule 1.4.35:

- a. the Managers, in their absolute discretion, may defer payment of a Member's indemnity claim in respect of such Athens Convention/EU/EEA Passenger Liabilities or any part thereof until those liabilities or such part thereof as the Managers may decide have been discharged by the Member; and*
- b. if and to the extent any such liabilities discharged by the Club exceed the said limit of cover, any payment by the Club in respect thereof shall be by way of loan and the Member agrees to indemnify the Club in respect of such payment.*

The current Subsections 36 to 57 will be renumbered 37 to 57 in consequence of the incorporation of this new Subsection 36.

General Provisions (Rule 1) – Sanctions

In order to further clarify the extent of the exclusion of coverage in regard to embargoed or sanctionable activity, the current wording of Class I, Rule 1, Section 4.54 will be amended (and renumbered – see above) to read as follows:

55. Whenever coverage extended by the Association would be in violation of any law applicable to the Association or in contravention of law, including, but not limited to, the prohibitions and requirements of any economic, financial, or trade sanctions administered by any State or international or supranational organization, or would expose the Association to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any State or international or supranational organization, such coverage shall be null, void and of no effect. Any coverage hereunder provided by the Association shall not include or, as the case may be, shall by operation of law or pursuant to this subsection, cease or shall have ceased to include, coverage for, or with respect to, any prohibited or unlawful entity, cargo, subject matter, vessel, activity under laws applicable to the Association, a Member, or an entered vessel, or any activity which could lead to the imposition of sanctions against the Association, a Member, or an entered vessel.

Whenever coverage extended by the Association would be for any carriage, trade, voyage, or other activity that would violate law applicable to the Member or an entered vessel, or that could lead to the imposition of sanctions or other penalties against a Member or an entered vessel under economic, financial or trade sanctions administered by any State or international or supranational organization, coverage shall not extend to or shall cease to extend to such carriage, trade, voyage or other activity and be null, void and of no effect. In such circumstances, and if and to the extent permitted by any applicable law(s) , the Managers may exercise their discretion to extend cover only after disclosure by the Member to the Managers of all relevant facts and information concerning the subject carriage, trade, voyage, or other activity.

“Omnibus Clause” and other requests for coverage available only at the discretion of the Directors

In order to clarify the manner in which the ‘Omnibus Clause’ (Class I, Rule 2, Section 20), and other requests for coverage available only at the discretion of the Directors, should be processed and determined, a new Appendix B to the Rules will apply with effect from February 20, 2013, as follows:

APPENDIX B

PROCEDURES GOVERNING MEMBERS’ “OMNIBUS CLAIMS” AND OTHER REQUESTS FOR COVERAGE AVAILABLE ONLY AT THE DISCRETION OF THE BOARD.

Members may incur costs, expenses or liabilities which arise from incidents or circumstances that (1) are neither expressly covered nor excluded by the Association’s Rules or (2) which, as provided by the Rules, involve facts and/or circumstances which may only be considered for coverage at the discretion of the Association’s Directors. In such instances, Members may request coverage from the Directors. In their

discretion, the Directors may or may not agree to provide coverage, in whole or in part. For convenient reference, a list of the Association's Rules which provide for coverage at the Directors' discretion is attached hereto as "Schedule A".

Members requesting such discretionary coverage from the Directors shall comply with the following procedures:

- 1. The Board of Directors meets four times each year, usually in the second week of March, June, September and November.*
- 2. At least six weeks before a scheduled Board meeting, the Member or its authorized agent or attorney shall submit to the Directors, through the Managers via e-mail and/or overnight courier: (a) a letter or brief of no more than 10 pages, double spaced typed, stating the Member's request and all the reasons why the Directors should exercise their discretion to grant the request including the specific provision(s) in the Association's Rules upon which the request is premised, and (b) all evidentiary materials on which the Member relies for its request.*
- 3. At least four weeks before the Board meeting referenced in paragraph 2 above, the Managers may submit to the Directors (a) the Managers' position regarding the Member's request in a letter or brief of no more than 10 pages, double spaced typed; and (b) all contractual, statutory and/or evidentiary materials upon which the Managers' position is based. A copy of any such submission by the Managers shall be promptly sent to the Member.*
- 4. At least two weeks before the above Board meeting, the Member or its authorized agent may submit to the Directors a written reply to the Managers' position. Any reply shall be in the form of a letter or brief not exceeding 5 pages, double spaced typed and may include additional evidentiary materials.*
- 5. In their discretion, the Directors may permit or ask the Member to make an oral presentation at the relevant Board meeting. Such presentation shall not exceed 15 minutes or such other time as permitted by the Directors.*
- 6. If the Member believes time is of the essence, the Member may ask the Directors for an expedited briefing and decision schedule. If a majority of Directors agree to such an expedited consideration, the Directors shall set an appropriate briefing and decision schedule.*
- 7. For the purposes of resolving Members' requests, a majority of Directors shall meet in executive session. Having considered the submissions by the Member and the Managers and having conducted such discussions among themselves as they deem necessary, the Directors shall either (a) resolve the request on the basis of the Member's and Managers' written submissions; or (b) ask questions of the Member and/or Managers; or (c) ask the Member and/or Managers to make further written submissions and/or provide relevant documents and/or information in writing to clarify any issues within times and page limits set by the Directors. Within times and page limits set by the Directors, the Member and Managers may reply to each other's additional written submissions. If necessary, the Directors may extend the*

schedule originally adopted pursuant to paragraphs 2 - 4, above, to allow additional time for these purposes.

- 8. *As soon as reasonably possible, the Directors shall decide the Member's request. The decision of a majority of Directors present at the meeting shall be the Board's decision. In the event of a tie vote, the Chairman of the Board shall have a second vote or two votes, in total, and if the Chairman is absent or otherwise unavailable to vote on the Member's request, the Vice Chairman shall have such a second vote, or two votes in total.***
- 9. *The Directors shall explain the reasons for their decision in writing.***
- 10. *Under the Association's Rules providing for coverage at Directors' discretion, the Directors are granted "sole discretion" in making their decision. Accordingly, the Directors' decision is final and binding on the Association and the Member and is not appealable to any court, tribunal or any other forum whatsoever.***
- 11. *These procedures are separate and distinct from and do not apply to the Rule providing for Board adjudication of differences or disputes between a Member and the Association or the adjudication procedures set forth in Appendix A of the Association's Rules.***

SCHEDULE A

LIST OF RULES PROVIDING FOR COVERAGE AT THE DISCRETION OF THE ASSOCIATION'S BOARD OF DIRECTORS

CLASS I – PROTECTION & INDEMNITY INSURANCE

- ***Class I, Rule 1, Section 4, Subsection 25 (Compromise of Claims)***
- ***Class I, Rule 1, Section 4, Subsection 26(a) (Members' failures regarding claim notification and submission)***
- ***Class I, Rule 2, Section 8 – (Cargo)***
 - ***Proviso (a) – (Contract of carriage terms)***
 - ***Proviso (b) – (Deviation)***
 - ***Proviso (c) – (Misdelivery of cargo, post and ante-dated B/Ls, inaccurate B/Ls, etc.)***
- ***Class I, Rule 2, Section 9 unnumbered subsections (Fines, penalties and vessel confiscation)***
- ***Class I, Rule 2, Section 13, Subsection 3 (Unrecoverable General Average – inadequate security)***

- ***Class I, Rule 2, Section 17 (Sue and Labor and Legal Costs)***
- ***Class I, Rule 2, Section 20 (Omnibus Clause)***

CLASS II – FREIGHT, DEMURRAGE AND DEFENSE INSURANCE

- ***Class II, Rule 1, Section 4, Subsections 7 through 9 (FD&D Cover)***
- ***Class II, Rule 3, Section 4 (Non-recoverability under Class II of risks excluded under Class I (P&I))***

CLASS III – CHARTERER’S RISKS

- ***Class III, Rule 3, Section A, Subsection 3 (P&I Insurance)***
- ***Class III, Rule 3, Section B, Subsection 3 (Loss of or damage to an insured vessel (DTH) and for financial loss arising therefrom)***
- ***Class III, Rule 3, Section C, Subsection 3 (Charterer’s FD&D Cover)***

Risk and Losses Covered (Rule 2) - Liabilities in respect of collision

In order to ensure that the American Club’s provisions in regard to collision claims more closely conform to cover elsewhere in the industry (i.e. on the basis of single liability rather than cross liabilities), the current wording of Class I, Rule 2, Section 3.3.iii will be amended to read as follows:

Unless otherwise agreed in writing between the Member and the Association as a term of the vessel’s entry in the Association, if both vessels are to blame, then where the liability of either or both of the vessels in collision becomes limited by law, claims under this Section shall be settled upon the principle of single liability. In all other cases, claims under this Section shall be settled upon the principle of cross-liabilities, as if the owner of each vessel had been compelled to pay the owner of the other vessel such proportion of the latter’s damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Member in consequence of the collision.

Class II: Freight, Demurrage and Defense Insurance

Special conditions in Regard to Claims under Class II

In order to clarify the meaning of Class II, Rule 1, Section 4.6, the opening words of the proviso text will henceforward read as follows:

PROVIDED THAT:

Where a Member employs without the prior written approval of the Managers...



In addition, a new Subsection 7 will be added to Section 4 of Class II, Rule 1, dealing with the recovery of legal fees, expenses and/or costs, as follows:

Where the applicable law governing a Member's claim or dispute against a third party allows the prevailing party to recover legal fees, expenses and/or costs, and where the Managers have exercised their discretion to support such a claim or dispute in full or in part under Class II, the Association shall be entitled to recover legal fees, expenses and/or costs, plus any interest thereon, awarded to the Member by a court, tribunal, or other competent authority in any decision, order, award, or judgment, or by a settlement or agreement of the parties concerning any such claim or dispute. To the extent that such legal fees, expenses and/or costs are not recoverable in full, or if the Member settles or otherwise resolves its claim or dispute with a third party without the Managers' prior written consent or agreement, the Association shall be entitled to recover such legal fees, expenses and/or costs, plus interest thereon, on a pro rata basis from any or all recoveries by the Member on its principal claim, legal fees, expenses and/or costs and/or interest thereon.

The remaining Subsections of Rule 1.4 will be renumbered 8 to 11.

In addition to the foregoing specific changes, the amendments set out in regard to Class I 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 in regard to Classes I and II 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 subsections in earlier years which will also be corrected in the forthcoming edition of the Rule Book for 2013.

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