



**OCTOBER 11, 2018**

**CIRCULAR NO. 39/18**

**TO MEMBERS OF THE ASSOCIATION**

**Dear Member:**

**CONTINUING WARRANTY OF SEAWORTHINESS**

It has come to your Managers' attention that, from time to time, Members are offered contractual terms with counterparties requiring the shipowner to provide a continuing warranty of seaworthiness for the entire duration of the voyage. Should such circumstances arise, Members are urged to exercise caution before agreeing to such provisions since a warranty of this kind could prejudice their P&I cover.

Cover for cargo risks is conditional upon the Member not contracting on terms less favorable than the Hague Visby Rules (HVR). Article III paragraph 1 of the HVR provides that the carrier must, before and at the beginning of the voyage, exercise due diligence to:

- make the ship seaworthy;
- properly man, equip and supply the ship; and
- make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Under the HVR "exercising due diligence" means taking all reasonable precautions to see that the vessel is fit for the voyage contemplated. The carrier is not obliged to give an absolute guarantee of seaworthiness and the ship need only be seaworthy at the commencement of the voyage.

If cargo owners can show that their loss was caused by a failure of the carrier to exercise due diligence to make the vessel seaworthy before and at the commencement of the voyage, the resulting loss will fall under Club cover. If, however, the loss was shown to have been caused by some event which affected the vessel's seaworthiness only during the voyage then, assuming the due diligence test in Article III paragraph 1 is passed, the carrier would not be liable to the cargo interests under Article III paragraph 1 of the HVR.

A continuing warranty of seaworthiness throughout the voyage alters that position. It makes the carrier potentially liable for any and all events affecting the vessel's seaworthiness during the entire voyage. This would represent terms less favourable than the HVR and so place any resulting claims outside Club cover.



Members are therefore advised to give serious consideration to the potential ramifications on cover of contracting on terms that give a continuing warranty of seaworthiness, and to contact the Managers for guidance before fixing on this basis.

Yours faithfully,

A handwritten signature in black ink that reads 'Joseph E.M. Hughes'. The signature is written in a cursive style and is positioned above a horizontal line.

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

*All International Group clubs have issued a similar circular.*