



FEBRUARY 13, 2009

CIRCULAR NO. 06/09

TO MEMBERS OF THE ASSOCIATION

Dear Member:

CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2009 POLICY YEAR

Reference is made to Circular No. 02/09 of January 16, 2009 setting out changes to the Club's Rules approved by your Board of Directors to take effect from February 20, 2009.

In that Circular, it was noted that a consensus had emerged among International Group clubs to disapply the "pay-to-be-paid" principle in regard to claims arising from the death, injury or illness of seamen. It was also explained that the precise wording of the change to the Rules of the American Club in implementation of the Group consensus remained under review.

That review has now been completed by your Board and, consequently, a new Sub-section 29 to Class I, Rule 1, Section 4 will be incorporated in the Rules for 2009, 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 or death 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 cancellation 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 cancellation, but as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such claim; and

d This Rule shall apply only to claims by a seaman employed on an entered vessel and to the personal injury, illness or death of such seaman solely arising from a happening, occurrence, event or matter occurring at or after noon GMT, February 20, 2009.

The current Sub-section 29 will be renumbered as Sub-section 30, and the remaining Sub-sections of Class I, Rule 1, Section 4 will also be renumbered in sequence thereafter.

As many Members will have observed from recent reports in the trade press, the change of policy within the International Group which has resulted in the above amendment to club rules generally has been the subject of much discussion within the maritime community.

In this context, and in the interests of clarity as to the American Club's interpretation and application of the new Rule, Members are asked to note the following important points. References, incidentally, to the Rules as set out below refer to the 2009 Rules as renumbered in consequence of the above change. Also, reference to Rule numbers, and the sections and sub-sections thereof as set out below, refer to those of Class I.

- It is expected, of course, that Members will continue to comply with all their obligations in regard to claims, including, without limitation, those included in Rules 1.4.17 to 20. The Managers still retain all the powers enumerated in Sections 1.4.21 to 28 – see also the first (introductory, unnumbered) paragraph of Rule 2. The Board also retains all the powers enumerated in Rule 1.4.47 to 53.
- The language contained in proviso a of new Rule 1.4.29 reflects, verbatim, that set out in the International Group's pro-forma. It provides considerable latitude in respect of the quantum of direct payment to the seaman, by use of the phrase "*and would otherwise be uncompensated.*"
- Proviso b of new Rule 1.4.29 is intended to make clear that the amount payable by the Club under this new Rule "*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 entry.*" Accordingly, if, for example, a Member fails to comply with its obligations under Rule 1.4.17 – 20, and the Managers and/or the Board determine that the Member would be entitled to no recovery, or to only a reduced recovery from the Club, the seaman or dependant would receive no more.
- Proviso c of new Rule 1.4.29, is intended to apply only to situations in which:
 - i. The Member has complied with all of his obligations to the Club under the Rules, including Rule 1.4.17 – 20; and



- ii. The claim against the Member has been settled or litigated with the approval of the Club's Managers; and
 - iii. The Member is unable for financial reasons to satisfy the "pay to be paid" provisions of Rule 1.4.28 and the first (introductory, unnumbered) paragraph of Rule 2; and
 - iv. The Club would be under no liability to the Member in respect of such claim in accordance with Rule 5.1.2.b, by reason of termination of coverage for non-payment of amounts due to the Club; and
 - v. The claim solely arises from a happening, occurrence, event or matter occurring prior to the date of termination of coverage; and
 - vi. Nevertheless, the Club will pay such claim, provided it arises from any happening, occurrence, event or matter occurring prior to the date of termination of coverage; and
 - vii. Any such payment made by the Club will be as agent only for the Member and the Member "*shall be liable to reimburse the Association for the full amount of [the Club's] payment*".
- Proviso d of new Rule 1.4.29 makes clear that the Rule is intended to apply only to seamen employed on an entered vessel and to the personal injury, illness or death of such seaman solely arising from a happening, occurrence, event or matter at or after noon GMT February 20, 2009.

It is hoped that the foregoing change is clear, particularly in view of the more detailed background as to its intent and interpretation as set out above. Should any modifications to the terms of the currently-implemented new Rule emerge over time in light of the differential application of the laws of England and those of New York as they bear upon this subject, Members will be informed accordingly.

Yours faithfully,


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