CIRCULARS PRIOR TO 1998

CIRCULARS

MAY 1998

This booklet contains reprints of various Circulars that are either considered to be relevant or of interest. ***The booklet does not contain reprints of all previous Circulars,*** *some of which may also still be relevant, and it should therefore only be regarded as a useful compendium of Circulars for easy reference.*

Some Circulars have been included for reference purposes even though they are out of date. Care should also be taken over references to specific Rules which may have been subsequently amended. Please apply to the Managers if any clarification is required.

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BLUE CARDS - CLC CERTIFICATES 1969 AND 1992 CIVIL LIABILITY CONVENTIONS

Members are referred to Circular No. T:024 of 5th January 1998. As stated in that Circular, from midnight on 15th May 1998 two separate regimes will be in force: the 1969 Civil Liability Convention (CLC) and the 1992 CLC. It may therefore be necessary for ships to carry on board both a 1969 and a 1992 certificate after that date.

A list of States which will be parties to the 1992 CLC as from midnight on 15th May 1998 is attached as Annex 1. A list of States which will be parties to the 1969 CLC as from midnight on 15th May 1998 is attached as Annex 2.

TANKERS FLYING THE FLAGS OF 1992 CLC STATES OR THE FLAGS OF STATES WHICH ARE NOT PARTIES TO EITHER THE 1969 OR THE 1992 CLC

This section is only applicable to ships flying the flags of a State party to the 1992 CLC (see Annex 1) or of States which are not parties to either 1969 or 1992 CLC, i.e. States which are not listed in Annex 1 or Annex 2.

IMO Legal Committee discussions

The problem of certificates was discussed at the Legal Committee of the International Maritime Organisation (IMO) when it met in London on 20th-24th April 1998. At the end of the week the Committee issued the attached circular (Annex 3). The Committee recommends that:

(a) where legally possible in accordance with their national law, States party to the 1969 CLC accept CLC certificates issued by States party to the 1992 CLC as proof that a ship has insurance cover as required by the 1969 CLC; and

(b) States party to the 1969 CLC continue the established practice of issuing 1969 CLC certificates to ships flying the flag of non-party States and accept such certificates issued by other States party to the 1969 CLC.

Effect of IMO Legal Committee Recommendations

(A) Some 1969 CLC States have in place legislation which will not permit them to accept 1992 CLC certificates in place of 1969 CLC certificates e.g. Canada and Italy. It will be necessary when calling at these countries for ships to have on board a 1969 CLC certificate. Panama has indicated that it would be prepared to provide 1969 CLC certificates for 1992 CLC flag ships. These certificates can be obtained in exchange for a blue card addressed to the Panamanian Registry on application to the Panamanian Consulates in London, New York or Tokyo. The cost of the certificate will be USD100. The addresses of the Consulates are:

Consulate General of Panama,
Panama House, 40 Hertford Street,
London, W1Y 7IG, United Kingdom
Tel: + 44 171 409 2255 Fax: + 44 171 493 4499

Consulate of New York,
Mr. Francisco Iglesias - Consul,
1212 Avenue of the Americas, 10th Floor,
New York, N.Y. 10036, U.S.A.
Tel: + 1 212 840 2450 Fax: + 1 212 840 2469
Consulate of Tokyo,
Mr. Mario Medaglia O. - Consul,
Kowa Building, No.5 R, 802, 4-15-23 Nishi Azabu,
Minato-Ku, Tokyo 106, Japan
Tel: + 81 3 3499 3661 Fax: + 81 3 3499 3666

It is likely that other 1969 CLC States will also be prepared to issue certificates.

(B) Some 1969 CLC States have indicated that they would not insist on the carriage on board of a 1969 CLC certificate provided that the ship carries on board a 1992 CLC certificate and a 1969 CLC blue card addressed to a 1969 flag state. Malaysia is one such State.

(C) Some 1969 CLC States have agreed to accept 1992 CLC certificates as evidence of 1969 CLC liabilities, e.g. Indonesia.

In order to ensure world-wide trading, ships flying the flag of 1992 CLC States and ships flying the flag of a State which is not party to the 1969 CLC are recommended to carry on board the following:

- a copy of the IMO Circular;
- a 1992 CLC certificate; and
- a 1969 CLC certificate (this may be substituted by a 1969 CLC blue card addressed to a 1969 flag state provided a shipowner is not calling at ports in a country where there is in place national legislation which forbids the acceptance of a 1992 CLC certificate as evidence of insurance in accordance with the 1969 Convention).

Should Members wish for a 1969 CLC blue card they are recommended to contact the Association.

TANKERS FLYING THE FLAGS OF 1969 CLC STATES

This section is only applicable to ships flying the flag of a State party to the 1969 CLC (see Annex 2).

As from midnight on 15th May 1998 it will be necessary for ships in this category to carry on board a 1992 CLC certificate. This can be obtained in exchange for a blue card from:

Department of Transport, Marine Office,
Central Court, 1B Knoll Rise,
Orpington, Kent, BR6 0JA, United Kingdom
Tel: + 44 1689 890400 Fax: + 44 1689 890446

The registration fee is GBP33.

A circular in similar terms is being sent by all the other Clubs in the International Group.

ANNEX 1

STATES PARTY TO THE 1992 CLC[1]
(as at midnight on 15th May 1998)

Australia, Bahamas, Bahrain, Bermuda[2], British Virgin Islands[2], Cyprus, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Isle of Man[2], Japan, Korea (Republic of), Liberia, Marshall Islands, Mexico, Monaco, Netherlands, Norway, Oman, Spain, Sweden, Switzerland, Tunisia, United Kingdom.

The 1992 CLC will enter into force in:
Croatia at midnight on 11th January 1999.
Grenada at midnight on 6th January 1999.
Jamaica at midnight on 5th June 1998.
Philippines at midnight on 6th June 1998.
Singapore at midnight on 17th September 1998.
United Arab Emirates at midnight on 18th November 1998.
Uruguay at midnight on 8th July 1998.

ANNEX 2

STATES PARTY TO THE 1969 CLC[1]

Albania, Algeria, Antigua & Barbuda, Barbados, Belgium, Belize, Benin, Brazil, Brunei Darussalam, Cambodia, Cameroon, Canada, Cayman Islands[2], Chile, China (People's Republic of), China Hong Kong SAR, Colombia, Costa Rica, Côte d'Ivoire, Croatia[3], Djibouti, Dominican Republic, Ecuador, Equatorial Guinea, Estonia, Fiji, Gabon, the Gambia, Georgia, Ghana, Gibraltar[2], Guatemala, Guyana, Iceland, India, Indonesia, Italy, Kazakhstan, Kenya, Kiribati, Kuwait, Latvia, Lebanon, Luxembourg, Madeira[4], Malaysia, Maldives, Malta, Mauritania, Mauritius, Morocco, Mozambique, New Zealand, Nicaragua, Nigeria, Panama, Papua New Guinea, Peru, Poland, Portugal, Qatar, Russian Federation, Saint Kitts & Nevis, Saint Vincent & the Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore[5], Slovenia, Solomon Islands, South Africa, Sri Lanka, Syrian Arab Republic, Tonga, Tuvalu, United Arab Emirates[6], Vanuatu, Venezuela, Yemen, Yugoslavia.

[1] Although every attempt has been made to ensure the accuracy of the information listed, Members intending to rely on the information should check with the relevant authorities.
[2] Ratification effected by the United Kingdom.
[3] The 1992 CLC will enter into force at midnight on 11th January 1999 in Croatia.
[4] Ratification effected by Portugal.
[5] The 1992 CLC will enter into force at midnight on 17th September 1998 in Singapore.
[6] The 1992 CLC will enter into force at midnight on 18th November 1998 in the United Arab Emirates.

ANNEX 3

CLC INSURANCE CERTIFICATES
DRAFT LEGAL COMMITTEE CIRCULAR

Introduction

1 Article VII of the International Convention on Civil Liability for Oil Pollution Damage (CLC) makes insurance compulsory for ships carrying more than 2,000 tons of oil in bulk as cargo. Such ships must carry a certificate issued by a State as proof of compliance with this requirement.

2 Since 30th May 1996, two versions of the CLC have been in force simultaneously: the original Convention of 1969, and that Convention as amended by the Protocol of 1992. This has not created many practical difficulties. Those States which are party to both the 1969 and 1992 CLC have generally continued to accept certificates issued by States which are party only to the 1969 CLC.

3 On 16th May 1998 States party to the 1992 CLC will cease to be party to the 1969 CLC. This has resulted in some confusion regarding the issue and recognition of CLC certificates. This circular seeks to provide clarification.

The legal framework and State practice

4 Article VII of the 1969 CLC only makes explicit provision for each State party to issue certificates to ships registered in that State and for their mutual recognition by other States party. Article VII of the 1992 CLC makes clear that States party may also issue certificates to ships registered in non-party States, and that these must be recognised by other States party.

5 The changes made to Article VII by the 1992 Protocol simply put long-standing State practice on a clear legal footing. Legislation implementing the 1969 CLC in some States makes explicit provision for the issue of certificates to ships not registered in a Contracting State. These States have also accepted 1969 CLC certificates which other States party have issued to ships registered in non-party States.

The problem and recommended solutions

6 From 16th May 1998, the owners of ships registered in a State party to the 1969 CLC will need to have obtained a 1969 CLC certificate from their flag State and a 1992 CLC certificate from a State party to the 1992 CLC. They can then trade freely, confident in the knowledge that these certificates will be accepted by other States party.

7 The position is less simple for ships registered in States party to the 1992 CLC. In order to minimise the practical problems caused when States party to the 1992 CLC cease to be party to the 1969 CLC, the Legal Committee, **recalling Resolution 1 of the CLC Conference on the recognition of certificates issued in accordance with the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the International Convention of Civil Liability for Oil Pollution Damage, 1992, finds it desirable that parties to those Conventions make all efforts to facilitate the recognition of certificates required by the Conventions for a period in which these instruments co-exist. The Legal Committee** recommends:

(a) that, where legally possible in accordance with their national law, States party to the 1969 CLC accept CLC certificates issued by States party to the 1992 CLC as proof that a ship has insurance cover as required by the 1969 CLC; and

(b) that States party to the 1969 CLC continue the established practice of issuing 1969 CLC certificates to ships not registered in a State party to the 1969 CLC and accept such certificates issued by other States party to the 1969 CLC.

8 The Committee also welcomes the statement by the International Group of P&I Clubs that, where there is in force a policy of insurance satisfying the requirements of Article VII of the 1992 CLC, there is also in force a policy of insurance satisfying the requirements of Article VII of the 1969 CLC.

9 The Committee requests that Member States bring the contents of this Circular to the attention of the managers of their shipping registries, port State control inspectors and other interested parties.

THE MILLENNIUM BUG

Most Members will be aware already of the problems posed by the approaching change in millennium for computer hardware and software systems as well as electronic chips embedded in equipment, especially control systems.

Computer systems which have stored year values as a two-digit field will recognise the year 20**00** as an earlier date than 19**99**. Any computer function which uses a date to calculate, initiate, action, schedule or report will be affected. These problems may be accentuated in systems in which programmers have used the digits 00 and 99 for special purposes, such as to start up or shut down certain processing or programs. The date 9th September 1999 (9.9.99) may be problematic in some systems. Some equipment will be affected by the fact that the year 2000 is a leap year and will not handle the date 29th February 2000.

Any piece of equipment containing process control chips incorporating date-sensitive functions, even if those functions are dormant, will be vulnerable to failure.

Much equipment on board ships may be affected, including fire alarm and sprinkler systems, engine management and alarm systems, radar and navigational systems, cargo handling and tank control systems, and communications systems. GPS receivers may be additionally affected by the global positioning system reaching the end of its 1024 week cycle on 21st August 1999.

Research has shown that:

- there may be more than 50 chips embedded in such equipment in a modern ship;
- between 20% and 30% of these chips may not be millennium compliant;
- malfunctions in such chips will be varied with some systems failing safe, others shutting down and the rest just providing incorrect data.

The same problems will also impact upon the whole infrastructure which supports shipping: this will include port operations, cargo terminal systems and equipment, traffic management systems and Coastguard controls. Therefore while the Shipowners themselves may become compliant, their operations may be affected, in some cases severely, by the problems of others.

It is essential that those Members who have not already begun to do so should immediately plan and implement their response to the problems posed by the change in millennium. This will necessitate compiling a complete inventory of all hardware and software systems including equipment with embedded chips, deciding whether to repair or replace each item in the inventory and testing each that remains to ensure that it is millennium compliant - that is to say that neither performance nor functionality is affected by dates prior to, during and after the year 2000.

Members should expect that regulatory and certificating authorities, banks, auditors and business partners may insist on millennium compliance.

It is anticipated that sources of technical advice and support in ensuring millennium compliance will become increasingly scarce so it is prudent for Members to take action now.

For its part, the International Group has implemented steps to check that its suppliers will be millennium compliant, including the member Clubs participating as reinsurers of each other in the Pooling Agreement, the reinsurers underwriting the Group General Excess Loss Reinsurance Contract, and the Club Correspondent network.

The Group is in the process of arranging four conferences, to be held in Asia, Europe and the United States in the early summer. The purpose of these conferences is to raise awareness as widely as possible of the need for timely action, to provide more detailed information as to the problems identified to date and to put forward methods of addressing those problems. Details of the dates, venues and agendas will be circulated as soon as they are available and Members are urged to attend the conference most convenient to them. Members will be expected to take all prudent steps to ensure their own compliance.

In the meantime, Members are urged to take action now. This is one deadline which cannot be put back.

A circular in similar terms is being sent by all the other Clubs in the International Group.

INTERNATIONAL GROUP AGREEMENT

The International Group has prepared this Circular which it is hoped will be helpful to Members.

1. BACKGROUND

As reported in Circular to Members No.5:240 dated 23rd October 1997 the International Group on 16th September last year formally responded to the European Commission's Statement of Objections issued in June. Copies of the Group's Response were available to any Member who wished to review the details in full, but a summary of the background and the principal issues raised in the Statement of Objections was set out in that Notice.

At a meeting between representatives of the Group and Commissioner Van Miert and his officials on 18th September, the Commission accepted the value of the Clubs' claims sharing arrangements and said that they had no intention of doing anything which might destroy the system. On the extent of cover issue they welcomed the reduction in the level of overspill cover to 2.5% but they still had the complainant's views to consider. They were also pleased that the reinsurance issue would be addressed.

On the IGA, they said that they wished to examine whether the Agreement might be improved although they recognised that in a mutual context full "price" competition is not appropriate. They suggested that the system might be made more "vibrant" perhaps by looking at administrative costs.

In accordance with the Commission's invitation to conduct further discussions, representatives of the Group met with DGIV officials during October. Since the Group felt that the Commission's concerns in relation to the level of cover and reinsurance issues had been substantially met, the discussions focused principally on the IGA. The Group's position is that modification to make the IGA quotation procedures as light a restraint as possible had already been agreed in exhaustive dialogue with the Commission between 1981 and 1985.

On 23rd October 1997, the Commission formally invited the Group to put forward proposals by 14th November, and stated that it intended to "finalise" the case before 20th February 1998. Group Members felt that proposals might be developed to supplement the IGA procedures that would increase transparency especially in the context of administration costs. This would enable Members to make a simple and direct comparison between the costs of individual Clubs and would add a new dimension to the competitive environment in which the Clubs already operate. Exploratory proposals were developed to create a level playing field for disclosure by Group Clubs of administrative costs by the creation of an expense ratio for each one based on a five year average calculated on an uniform basis. The Group submitted these suggestions on 14th November.

In December Group Managers met DGIV officials who indicated that the Group's transparency proposal was not acceptable but it was not possible to discuss the proposals in detail. DGIV suggested a more radical solution applying the IGA only to pooling and reinsurance costs. The Group emphasised that such a proposal was unworkable, because it would lead to

discriminatory practices which the IGA is designed to restrain. Efforts to conduct further discussions with DGIV have so far been unsuccessful.

2. CURRENT POSITION

On 13th February, in a letter from Commissioner Van Miert, the Commission rejected the Group's transparency proposal, and asked for further proposals to be submitted by 20th March failing which DGIV would invite the Group to the oral hearing which it had requested in its response to the Statement of Objections.

The Group has sent a reply based on the following points:

(a) **IGA** The Group made clear its view that the Commission should renew the exemption of the IGA as it stands. The Group has emphasised that the transparency proposal would make a real contribution to the competitive environment in which the Clubs operate without damaging the Group's mutual system. The Group has once more pressed for an opportunity to explain the proposal in detail, particularly since it appears from Mr. Van Miert's letter that the proposal has not been properly understood.

(b) **Level of Cover** The Group re-emphasises the arguments already advanced to support the new limit of about US$4.25 billion as the consensus solution arrived at unanimously by all Group Clubs.

(c) At the same time the Group points out that since DGIV has not resolved the issue by 20th February 1998, as they intended, an uncertainty now exists about the validity of the overspill system because the new limit has not been approved by DGIV. The Group is therefore pressing for an urgent resolution of this issue.

(d) **The Reinsurance Issue** Agreement has been reached subject to minor drafting modifications which currently appear to pose no difficulties to the Group.

3. NEXT STEPS

(a) The Group will be in close contact with shipowners and their organisations to respond to enquiries and offers of further support to build on that already provided.

(b) Other important support has already been developed in a number of European States and within the European Commission. The Group will be intensifying contacts with European institutions and Governments, to develop further support.

(c) The Group will continue to press for further discussions with DGIV.

(d) In case such discussions do not take place, the Group is preparing for an Oral Hearing (a date of 24th April has already been reserved by DGIV). It is important to stress that an Oral Hearing is not an adversarial process or a judicial hearing but an opportunity to present the Group's case to European Member States and for the Group and others to raise questions with DGIV.

Copies of the Group's reply to Commissioner Van Miert are available for any Member who wishes to review the Group's arguments fully. A reaction to the Group's reply is awaited and Members will be kept advised of developments.

ISM (INTERNATIONAL SAFETY MANAGEMENT) CODE

We refer to our recent notices of meetings of the Members of Classes 5 and 8 of the Association on 28th January 1998 for the purpose of altering and adding to the Rules and we confirm that the Members who attended the meetings, held concurrently with the meeting of the Committee on that day, approved the alterations and additions to the Rules set out in the notices, to take effect from 20th February 1998 - with the exception of the proposed proviso 9.15.2 to the pollution rule, which was withdrawn as not all Associations in the International Group would agree to introduce it.

We draw your attention particularly to the following new paragraphs of Rule 8 entitled **Classification, Inspections of Ships and Statutory Requirements**:

8.7 The Member concerned shall ensure compliance with all the statutory requirements of the State of the ship's flag relating to the construction, adaptation, condition, fitment, equipment, manning and safety management of the entered ship and ensure at all times the maintenance of the validity of such statutory certificates as are required to be issued by or on behalf of the State of the ship's flag.

This new Rule requires compliance by Members with statutory requirements of the State of the ship's flag relating to various matters including safety management of the entered ship, which covers the requirements of the ISM Code.

8.8 Save to the extent that the Committee in its sole discretion may otherwise determine, there shall be no recovery in respect of any liability, costs or expenses arising during a period when any of the foregoing requirements have not been fulfilled. However, where the entry of a ship is in the name of a Member who is a Charterer (other than a demise Charterer), the rights of recovery of such Charterer shall not be dependant upon fulfilment of the requirements of Rules 8.2, 8.3 and 8.4.

As Members will be aware, on 1st July 1998 it will become a statutory requirement, in most flag States, that owners and/or operators of passenger ships, tankers, gas carriers, bulk carriers and high speed craft over 500 gt hold a valid Document of Compliance (DOC) and that the ships under their control have Safety Management Certificates (SMCs); and the Association's Rule 8.7 provides that Members shall ensure compliance with this requirement and Rule 8.8 provides that, subject to the Committee's sole discretion to the contrary, there shall be no recovery by the Member from the Association when this requirement has not been fulfilled.

The Managers sent a circular letter to all Members concerned on 31st July 1997 with a questionnaire asking if they had any doubts as to whether certificates would be obtained for their ships and operator by the due date; and the replies showed general confidence that certificates would be obtained by the due date and that compliance with the ISM Code would be timely.

In the circumstances, Members should be warned that the Association will expect all Members concerned to have complied with statutory requirements

for implementation of the ISM Code and to have obtained the relevant certificates by the due date.

If any Members are concerned that they may not obtain the required certificates by the due date, could they please advise the Managers now, indicating what steps and arrangements they have made to date to implement a safety management system in their offices and onboard their ships and to obtain the relevant certificates.

EXCESS OIL POLLUTION INSURANCE US$200,000,000 EACH VESSEL ANY ONE ACCIDENT EXCESS OF US$500,000,000 EACH VESSEL ANY ONE ACCIDENT

As in previous years, an open cover facility has been arranged from Noon GMT, 20th February 1998, for acceptance of declarations by Members or their Brokers subject to the following conditions and rates:

To cover the Assured's legal liability for oil pollution claims as per underlying policy or certificate of entry and to follow settlements of the underlying policies in all respects. The facility is subject to the OPA non-certification clause which reads as follows:

> "Notwithstanding any other provision of this policy or of any underlying insurance, this policy of insurance is not evidence of financial responsibility under the Oil Pollution Act of 1990 or any similar federal or state laws. Any showing or offering of this policy by the Assured as evidence of insurance shall not be taken as any indication that the Underwriters consent to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Underwriters do not consent to be guarantors or to be sued directly."

This is a direct insurance in the London Market, and is **not** a reinsurance of the London Steam-Ship Owners' Mutual Insurance Association Ltd.

RATES

(1) Dry Cargo vessels and gas carriers (not carrying oil as cargo) and passenger vessels:
US$0.028 per GT p.a. for worldwide trading, minimum 3,000 GT.

(2) Clean tankers (defined as carrying other than persistent oil as cargo):
US$0.055 per GT p.a. for worldwide trading, minimum 3,000 GT.

(3) Dirty tankers (defined as carrying persistent oil as cargo) other than (4) below:

Basic premium per GT p.a. excluding cargo voyages to the USA as underlying Club entry (minimum 3,000 GT).

Year Built	Rate (per GT)
1994-98	US$0.081
1989-93	US$0.086
1984-88	US$0.098
1979-83	US$0.111
1974-78	US$0.131
1973 & earlier	US$0.152

Vessels are deemed to have been built in the year in which they are shown as completed in Lloyd's Register of Shipping.

PLUS voyages to the USA, at an additional premium of US$0.10 per GT per voyage (minimum 3,000 GT).

All features of the underlying Club premium calculation apply to this additional voyage premium, including the 20 voyage maximum and 50% tonnage for LOOP and transhipment.

(4) Dirty tankers under 3,000 GT continuously trading in the USA will pay a flat premium of US$7,642 in full.

Adjustments in premium may be made as follows:

I Regardless of short periods, all declarations will be charged at the full annual rate, except for the following:
   a) Vessels for which the underlying certificate of entry is cancelled or endorsed to cancel, may be deleted from cover at pro rata return premium.
   b) Vessels for which a new underlying certificate of entry is issued or a current certificate of entry is endorsed to add, may be added from date request for cover is made to the Association or to Miller Marine Ltd., at pro rata premium from date of attachment with the Association.

II Where OBO's change from trading dry to trading with dirty products, or tankers change from trading clean to trading dirty, the change in basis of declaration advised in the Association's Circular 5:246 dated 22nd January 1998 will apply.
   This means that if at any time during an applicable quarter a ship trades with dirty products then the full dirty tanker rates shown at basis (3) above will be payable for that quarter only, and the vessel will also become liable for U.S. voyage additional premiums. The applicable quarters are: 20th February to 20th May; 20th May to 20th August; 20th August to 20th November and 20th November to 20th February.

III No cover is available under this facility for charterers other than bareboat charterers and charterers named as Co-Assured on the underlying Owners' entry. Cover is always subject to the limits any one vessel arising out of any one event.

IV All premium developed under (1), (2), (3) **Basic premium** and (4) above, is payable at inception. Voyage additional premiums under (3) are payable quarterly.

V No laid-up returns.

VI In respect of the U.S. voyage surcharge for parcel tankers to follow the underlying Club entry and charge as follows:
   a) where 5,000 metric tonnes or less of persistent oil are carried as cargo:
      US$0.10 per GT per voyage calculated on 3,000 GT;
   b) where between 5,001 and 10,000 metric tonnes of persistent oil are carried as cargo:
      US$0.10 per GT per voyage calculated on 7,500 GT;
   c) where more than 10,000 metric tonnes of persistent oil are carried as cargo:
      US$0.10 per GT per voyage calculated on actual GT of the vessel.

VII It is agreed to allow a 12.5% discount from the above rates in respect of tankers equipped with segregated ballast tanks in accordance with the requirements of regulation 13 of Annex 1 to MARPOL 73/78.
   Information: A parcel tanker is defined as a ship constructed or adapted primarily to carry cargoes of noxious liquid substances in bulk, and capable of carrying at least 10 grades simultaneously, having been issued

with an international certificate of fitness for the carriage of dangerous chemicals in bulk.

VIII 10% discount is available from all rates.

CALIFORNIA

The limit of US$200,000,000 is increased to US$250,000,000 in respect of tankers whilst in Californian waters only, at the following **further** additional premiums:

US$0.025 per GT per voyage in respect of dirty tankers only.

US$0.005 per GT per voyage in respect of clean tankers.

Dirty tankers under 3,000 GT continuously trading in Californian waters will pay a flat Additional Premium of US$1,900 in full.

All other terms and conditions and features of underlying premium calculations to apply.

OBO's AND CLEAN TANKERS 1998/99 POLICY YEAR

At the moment, in the case of OBO's or clean tankers, the terms of entry must either contain a warranty that the ship is trading dry (in the case of an OBO) or with clean products (in the case of a tanker) or in the absence of such a warranty the ship will attract the full annual dirty tanker reinsurance cost. If an OBO or a tanker trades with dirty products at any time during a Policy Year the full annual dirty tanker reinsurance cost is payable.

For the forthcoming Policy Year, it has been decided to assess such ships on a quarterly rather than annual basis. This means that the full dirty tanker reinsurance cost will apply in any quarter unless the Member accepts a warranty that, for that quarter, the ship will trade dry in the case of an OBO or clean in the case of a tanker. If at any time during any quarter the ship trades with dirty products then the full dirty tanker reinsurance cost applies for that quarter. The applicable quarters are 20th February to 20th May, 20th May to 20th August, 20th August to 20th November and 20th November to 20th February.

If any Member would like to discuss this matter further, they should contact the Managers.

TANKERS VOYAGING TO AND FROM THE UNITED STATES - 1998/99 POLICY YEAR

The Managers advised Members in the Association's Circular 5:156 dated 27th December 1990 that vessels carrying persistent oil to or from the United States would be surcharged, to protect the International Group Pooling and Excess Loss Reinsurance arrangements against the distorting effect of the likely increased costs resulting from the United States Oil Pollution Act 1990 ("OPA 1990"), and legislation enacted by various States. Similar arrangements applied for subsequent Policy Years, subject to annual variations in the surcharge rates. The Association's Circular T:023 dated 17th January 1997 detailed the arrangements to apply for the 1997/98 Policy Year.

The Committee continues to recognise that some concession should be made to vessels with segregated ballast tanks, and has therefore decided that for the Policy Year from Noon 20th February 1998 to Noon 20th February 1999 a lower surcharge rate will apply to such vessels.

Vessels equipped with segregated ballast tanks in accordance with the requirements of Regulation 13 of Annex 1 to MARPOL 73/78 will be surcharged at a rate of 14 U.S. Cents per gross ton, per voyage, subject to a maximum charge or "cap" of 20 voyages in the Policy Year.

Vessels not equipped with segregated ballast tanks in accordance with the requirements of Regulation 13 of Annex 1 to MARPOL 73/78 will be surcharged at a rate of 16 U.S. Cents per gross ton, per voyage, also subject to a maximum charge or "cap" of 20 voyages in the Policy Year.

As in previous years, the surcharge will apply to all tankers carrying out a U.S. voyage, and carrying persistent oils.

Whichever surcharge rate applies, the amount will be halved in respect of cargoes exclusively discharged at LOOP (Louisiana Offshore Oil Port) or exclusively transferred to another ship at a place approved by the U.S. Coast Guard and in the exclusive economic zone ("EEZ") as defined in OPA 1990.

In the case of tankers of 3,000 g.t. or less, the surcharge applying to all U.S. trading vessels carrying persistent oils will be, at Owners' option, either:

a) A standard surcharge of US$9,600 for full or part year; or
b) US$480 per voyage subject to a "cap" of 20 voyages in the Policy Year.

However, should tankers of 3,000 g.t. or less carry segregated ballast tanks in accordance with the requirements of Regulation 13 of Annex 1 to MARPOL 73/78 then the surcharge applying to all such U.S. trading vessels carrying persistent oils will be, again at Owners' option, either:

a) A standard surcharge of US$8,400 for full or part year; or
b) US$420 per voyage subject to a "cap" of 20 voyages in the Policy Year.

Parcel Tankers

As for previous years, special considerations will continue to apply to parcel tankers as follows:

Definition: Ships constructed or adapted primarily to carry cargoes of noxious liquid substances in bulk, and capable of carrying at least 10 grades simultaneously, having been issued with an international certificate of fitness for the carriage of dangerous chemicals in bulk.

Vessels falling within the definition of **Parcel Tankers** can be separately declared and the surcharge premium equivalent to a vessel under 3,000 g.t. will apply when 5,000 tonnes or less of persistent oil are carried.

Varying the charging basis that applied in 1997/98, where between 5,001 and 10,000 tonnes of persistent oil are carried the premium surcharge equivalent to a vessel of 7,500 g.t. will apply: US$1,050 per voyage if fitted with SBT's or US$1,200 without SBT's.

For U.S. voyages where more than 10,000 tonnes of persistent oil are carried, the vessel's full g.t. should be declared and a voyage premium based on the full g.t. will apply. The maximum annual premium payable by parcel tankers will not exceed the equivalent of 20 voyages.

Declarations

The Club's cover for all tankers capable of carrying oil in bulk as cargo will continue to incorporate the following Exclusion Clause: "Excluding any and all claims in respect of oil pollution arising out of any incident to which the U.S. Oil Pollution Act 1990 is applicable". The Exclusion Clause will apply unless Members agree before 20th February 1998 to undertake (1) to make quarterly declarations in arrears, at the latest within two months of the end of each quarter shown on the attached declaration forms, and (2) to pay the additional premium required in respect of voyages to or from the USA or to U.S. waters. However, requests from Members in previous years for the lifting of the Exclusion Clause will be treated as applying also to 1998/99, and such Members need therefore take no action until the first declaration form is due to be returned, unless they wish the Exclusion Clause to be reinstated, in which case they should contact the Managers.

Voyage declaration forms for each of the four quarters ending 20th May 1998, 20th August 1998, 20th November 1998 and 20th February 1999 are attached to this Circular. Members should state explicitly on the declaration forms if vessels are equipped with SBT's as defined above, or not so equipped. In the absence of an explicit declaration, it will be assumed that vessels are not equipped with SBT's, and the higher rate of additional premium will apply.

Definitions of U.S. voyages and persistent oils are shown on the back of the declaration forms, although the lists are not exhaustive. Members should please contact the Managers if further forms are required.

BLUE CARDS - CLC CERTIFICATES - 1969 AND 1992 CIVIL LIABILITY CONVENTIONS

From 16th May 1998, shipowners will require two Civil Liability Convention (CLC) certificates in order to trade world wide: one certifying 1969 CLC liabilities, the other 1992 CLC liabilities.

Traditionally, Clubs have provided blue cards addressed to a vessel's flag state, confirming an owner has in place insurance to cover Civil Liability Convention liabilities. On presentation of this blue card to the flag state registry, an owner has received in return a CLC certificate. The owner may be required to present the certificate on entering the waters of a state party to the CLC, to demonstrate that he has in place insurance to cover claims for oil pollution up to a certain limit, determined by the tonnage of the ship.

Background

Until 30th May 1996 only one Civil Liability Convention was in force: the 1969 CLC providing limits of liability on a sliding scale starting at SDR 133 per limitation ton up to a maximum of SDR 14 million (approximately USD 20.2 million).

On 30th May 1996 the 1992 Protocol to the 1969 CLC entered into force. The limits under the 1992 Protocol are SDR 3 million (USD 4.3 million) for tankers not exceeding 5,000 gross tons rising by SDR 420 (USD 604) per gross ton to a maximum of SDR 59.7 million (USD 86 million).

For a transition period the states which were parties to the 1992 Protocol (1992 CLC) were not required to denounce the 1969 CLC if they were parties to both. The effect of this was that if a spill occurred in the waters of a 1992 flag state, but the ship was flying the flag of a state party only to the 1969 CLC, the ship would be able to limit its liability to the relevant sum under the 1969 CLC and not the higher limit of the 1992 CLC. Clubs issued "dual" blue cards with the following endorsement:

> "This is to certify that there is in force in respect of the above-named ship while in the above ownership a policy of insurance satisfying the requirements of (A) Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1969 and (B) Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992 **where and when applicable**."

If the flag state was a party to both the 1969 and 1992 CLC the shipowner received in return a certificate certifying that the shipowner had in place insurance covering liabilities under both Conventions. If the state was party only to the 1969 CLC, a certificate was issued covering 1969 CLC liabilities only. The transition period comes to an end on 15th May 1998. After that date a state will not be able to be a party to both the 1969 and 1992 CLC.

Practical effect

From midnight on 15th May 1998 two separate regimes will be in force: the 1969 CLC and the 1992 CLC.

(a) Ships flying flags of 1969 CLC states

Ships flying the flag of a state party to the 1969 CLC will be able to obtain from the ship's flag registry a 1969 CLC certificate covering liabilities under the 1969 CLC as usual. They will need to obtain a certificate covering 1992 CLC liabilities from another source in order to be permitted to enter the waters of states parties to the 1992 CLC. Those States[1] are:

Australia, Bahrain, Denmark, Egypt, Finland, France, Germany, Greece, Japan, Liberia, Marshall Islands, Mexico, Monaco, Netherlands, Norway, Oman, Spain, Sweden, Switzerland and United Kingdom. (By 16th May it will also have entered into force in: Bahamas, Cyprus, Ireland, Korea (Republic of) and Tunisia.)

The 1992 CLC will enter into force in Jamaica on 6th June 1998, in Philippines on 7th July 1998, Uruguay on 9th July 1998, Singapore on 18th September 1998 and United Arab Emirates on 19th November 1998.

The United Kingdom, a party to the 1992 CLC, has agreed to provide 1992 CLC certificates for 1969 CLC flag ships:

These certificates can be obtained in exchange for a blue card from:

Department of Transport,
Marine Office,
Central Court, 1B Knoll Rise,
Orpington, Kent, BR6 0JA,
United Kingdom
Tel: +44 1689 890400; Fax: +44 1689 890446

The registration fee is: GBP 33

(b) Ships flying flags of 1992 CLC states

Ships flying the flag of a state party to the 1992 CLC will be able to obtain from the ship's flag registry a 1992 CLC certificate covering liabilities under the 1992 CLC. They will need to obtain a certificate covering 1969 CLC liabilities from another source in order to be permitted to enter the waters of states parties to the 1969 CLC. Those States are shown on the attached sheet.

After midnight on 15th May 1998 before a ship calls at a port in a state party to the 1969 CLC it will need to apply for a certificate from the ship registry of that state. Once this certificate has been obtained it can be retained on board for use during calls to any 1969 CLC states for the remainder of the policy year.

Amongst the 1992 flag states there will be no consistent format for CLC certificates to demonstrate the fact that the transition period will end on 15th May 1998. As an example the United Kingdom will issue a certificate with the following endorsement under the section "duration of security": "for 1969 Convention Liabilities, from noon GMT 20th February 1998 to midnight GMT 15th May 1998; and for 1992 Convention liabilities, from noon GMT 20th February 1998 to noon GMT 20th February 1999." On the other hand,

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[1] Although every attempt has been made to ensure the accuracy of the information listed, Members intending to rely on the information should check with the relevant authorities.

Norway, which does not issue a new certificate each year, will issue fresh certificates with effect from midnight on 15th May 1998 covering only 1992 CLC liabilities.

(c) Ships flying the flag of a state which is not a party to either CLC

These ships will need to obtain a dual certificate for the period up to and including 15th May 1998 and will require a 1969 CLC and a 1992 CLC certificate after that date. The dual certificate can be obtained from the United Kingdom. Since this certificate will cover 1992 CLC liabilities for the whole of the 1998 policy year, it will only be necessary to obtain a 1969 CLC with effect from midnight on 15th May 1998 from a 1969 CLC state.

Blue cards

The Clubs will continue to issue "dual" blue cards for the 1998 policy year. However, Members will require two blue cards for use during the course of the year for the reasons given above.

Recommendation

It is suggested that a copy of this circular be sent to all ships at the time CLC certificates are sent to the ships, since it is possible that port authorities may be reviewing certificates during ship calls after 15th May 1998 to ensure that the correct documentation is on board.

STATES PARTY TO THE 1969 CLC[1]

Albania, Algeria, Antigua & Barbuda, Australia[2], Bahamas[2], Bahrain[2], Barbados, Belgium, Belize, Benin, Brazil, Brunei Darussalam, Cambodia, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cyprus[2], Denmark[2], Djibouti, Dominican Republic, Ecuador, Egypt[2], Equatorial Guinea, Estonia, Fiji, Finland[2], France[2], Gabon, the Gambia, Georgia, Germany[2], Ghana, Greece[2], Guatemala, Iceland, India, Indonesia, Ireland[2], Italy, Japan[2], Kazakhstan, Kenya, Kiribati, Korea[2] (Republic of), Kuwait, Latvia, Lebanon, Liberia[2], Luxembourg, Malaysia, Maldives, Malta, Marshall Islands[2], Mauritania, Mauritius, Mexico[2], Monaco[2], Morocco, Mozambique, Netherlands[2], New Zealand, Nicaragua, Nigeria, Norway[2], Oman[2], Panama, Papua New Guinea, Peru, Poland, Portugal, Qatar, Russian Federation, Saint Kitts & Nevis, Saint Vincents & the Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovenia, Solomon Islands, South Africa, Spain[2], Sri Lanka, Sweden[2], Switzerland[2], Syrian Arab Republic, Tonga, Tunisia[2], Tuvalu, United Arab Emirates[3], United Kingdom[2], Vanuatu, Venezuela, Yemen. The United Kingdom has ratified on behalf of, inter alia, Bermuda, Cayman Islands, Gibraltar, Hong Kong and the Isle of Man[2]. The 1969 CLC will come into force in Costa Rica on 8th March 1998.

[1] Although every attempt has been made to ensure the accuracy of the information listed, Members intending to rely on the information should check with the relevant authorities.

[2] 1969 CLC has been denounced to take effect at midnight on 15th May 1998.

[3] 1969 CLC has been denounced to take effect at midnight on 18th November 1998.

UNITED STATES OIL POLLUTION ACT 1990 (OPA 90)
THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (CERCLA)
CERTIFICATES OF FINANCIAL RESPONSIBILITY (COFRs) BONDING FACILITY

We are pleased to be able to inform Members about a new bonding facility initiative launched by International Sureties Ltd. (ISL), a U.S. registered bonding Agent, to assist, in the first instance, dry cargo operators to obtain COFRs pursuant to OPA 90 and CERCLA up to USD70 million (77,000GT). However, ISL are also able to offer this bonding facility in a limited way to small tankers, that is to tankers which are of a tonnage that require a COFR not exceeding USD21 million (14,000GT).

This United States Coast Guard approved bonding facility is available at a cost of USD1,000 per vessel (irrespective of tonnage, subject to the maximum COFR cover of USD70 million stated), provided the operator is entered with a Club which is a member of the International Group of P&I Clubs.

The documentary requirements are that operators complete:

- A Surety Bond Guarantee Form (Department of Transport U.S. Coast Guard CG-5586-2) together with a Schedule of vessels to be covered
- A Letter of Indemnity in favour of the Bonding Companies
- Provide a cheque payable to International Sureties Ltd. for the Bond premium (USD1,000 per vessel) and a cheque payable to the United States Coast Guard for the COFR fee (USD80 per vessel) together with the operator's completed USCG Form CG-5585.

Members who wish to avail themselves of this bonding facility to meet their COFR requirements should obtain the documentation from ISL at the following address:

International Sureties Ltd,,
210 Baronne Street, Suite 1700,
New Orleans,
Louisiana 70112,
U.S.A.
Tel: (504) 581 6404
Fax: (504) 581 1876

The Managers are required to issue two letters, one to the Member and one to ISL themselves and should therefore be kept advised of any application. Further information can be obtained from International Sureties Ltd.

UNITED STATES OIL POLLUTION - VESSEL RESPONSE PLANS - CONTRACTS FOR SERVICES

This circular is addressed to all shipowner Members including owners of dry cargo vessels and tankers.

Previous advice to Members on the terms of contract which are required under the Federal regulations on vessel response plans in the United States has concentrated on four issues which are of importance to the Associations, as well as to the Member. These are the scope of indemnities contained in these contracts, provisions for control of the contractor's operations by the owner, provisions for funding of the contractor's invoices and warranties by the contractor that he is competent to perform the contracted service.

In the course of preparation of Members' Vessel Response Plans (VRPs) during 1993, a large number of contracts for various services, particularly of companies acting as "qualified individual" (QI) and oil spill response organisations (OSROs) were reviewed by the Managers of the Associations/Clubs in the International Group either at the request of individual Members or the contractors themselves. In many cases this review process included a discussion with the contractor concerned on modification of the originally proposed contract terms so as to conform with the general guidelines suggested by the Managers/Clubs. These guidelines are attached as Appendix 1 to this circular.

As a result of this review process many contracts were confirmed (a) to contain an indemnity which could be covered by the Association and (b) generally, in respect of other provisions in the contract, not to conflict with the guidelines suggested by the Managers/ Clubs. It is inevitable that this confirmation has been regarded by contractors and Members alike as "approval by the International Group of P&I Clubs".

The present position is that many contractors have made amendments to their contracts and the following comments may be helpful to clarify the significance of "approval" by the International Group of P&I Clubs in this context.

(1) Indemnity provisions

"Approval" of the wording of an indemnity provision in the contract is an affirmative statement that the owner's liability to indemnify the contractor pursuant to that clause is covered by the Association under the rule covering liabilities under certain contracts and indemnities, subject, as always, to the owner not being in breach of the Rules or his terms of entry.

Conversely, the absence of confirmation from the Club that the terms of an indemnity have been "approved" means that Club cover does not fully extend to the liabilities that may be incurred under the indemnity. Such liabilities must either be separately insured or, if not, cover is at the sole discretion of the Association in the event of the owner becoming liable for a claim under the indemnity.

Any Member being requested to sign a variation of a contract submitted to and Aapproved≅ by the Association is advised where appropriate to

check with the Club to ensure that such variations do not cause the initial "approval" to become invalid.

(2) Control of the contractor's operations

The Club continues to suggest that it is important for such contracts clearly to give the owner the right to control the operations of the contractor (rather than allowing the contractor to proceed with the contracted operations at his own discretion and to charge the owner accordingly). Contracts which have been "approved" by the Club contain provisions which are considered adequate to give such control to the owner. However, Members should note that some contractors offer more than one service. Members are therefore recommended to ensure that the entities appointed by them to perform the various services named in the VRP remain independent of each other, e.g. that persons performing the roles of QI/Spill Managers are genuinely independent from OSROs.

The extent to which control can actually be exercised over a contractor may depend upon the circumstances of a particular incident. To the extent that a Member fails in practice to exercise adequate control over a contractor, the Member may still be liable for the costs that are incurred under the contract but will be at risk of failing to make a complete recovery from the Association in respect of those costs to the extent that adequate control has not been exercised.

(3) Funding of contractors' services

Certain contractors have requirements concerning proof of financial viability to be given either on signing the contract or prior to the contractor performing services. Reliance should not be placed on the Association to provide any form of financial guarantee or evidence of insurance, other than the normal Certificate of Entry for the ship. In particular, some of the contracts which have been "approved" contain a provision that enables the contractor to request that payment for his services is secured by means of a deposit or a Club letter of guarantee as a condition of continuing to perform. "Approval" of a contract containing such a term does not constitute a commitment by the Association to provide such a Club letter of undertaking on behalf of the Member. As in all cases, the provision of Club security is at the discretion of the Association and agreement to provide such a letter of undertaking and the terms on which it is to be provided can only be determined by the Association in the light of all the circumstances of the incident. In addition to the usual pre-conditions of agreement to provide security, the Association will also need to be satisfied that the Member is exercising sufficient control over the operations of the contractor so that the costs incurred can form a proper claim on the Association.

(4) Contractors' warranties

In general terms, contracts which have been "approved" do contain some form of warranty on the part of the contractor that he is legally and professionally competent to perform the contracted service.

However, in no case has the Club been able to verify the legal or technical qualifications of any contractor and "approval" of the contract in no way constitutes a recommendation that a particular contractor or contract should be used by the Member concerned. In the event that the contractor fails to perform the contracted service, "approval" of the contract does not constitute a commitment by the Association to cover the Member against the potential consequences of his contractor's failure. It should also be noted that, although a number of contracts do contain schedules or appendices of rates to be charged by the contractor for his services, in no case does the Club's "approval" of the contract extend to agreement that all rates quoted are reasonable.

Whilst under Federal law Vessel Response Plans are only required from tanker owners, under State law such plans are sometimes required from owners of other vessels. A list of VRP requirements for individual States is attached as Appendix 2. States which are not mentioned on the list do not have separate requirements.

Attached as Appendix 3 is a schedule of those contractors whose contracts have been "approved" within the terms of the circular. Appendix 4 lists contractors whose contracts have been considered by the International Group but have not been "approved".

A circular in similar terms is being sent by all the other Clubs in the International Group.

APPENDIX 1

INTERNATIONAL GROUP GUIDELINES ON VRP CONTRACTS

1. **Control**
   It should be clear in the contract that the ultimate control of the clean-up operation remains with the owner.
2. **Funding (particularly important for contracts with OSROs)**
   The Association will not provide advance funding guarantees. It may be possible in the appropriate cases to guarantee payment by the Member of invoices relating to the services provided under the contract in accordance with the contract terms within a reasonable time after the incident. Such a guarantee will be subject to the following provisos:
   (i) A fixed US dollar amount.
   (ii) A fixed time limit for the services, i.e. the letter would guarantee expenses incurred in providing response services up to a fixed period of time as appropriate (e.g. seven days from the incident date) subject to extension by written agreement of the Association; and
   (iii) A haul-off clause which provides for the Association's liability to be terminated upon 24 hours' notice.
3. **Insurance and Indemnity**
   The Association will not agree to provide co-assurance for OSROs or to warrant the owners' cover directly to the contractor.
   It will agree to provide cover for limited indemnities to QIs and OSROs in the following form:

(i) Contractor indemnifies owner/operator for liabilities arising from gross negligence or wilful misconduct of contractor or a breach of the contract, or breach of the applicable law or regulation by the contractor.
(ii) Owner/operator indemnifies the contractor against liabilities arising from gross negligence or wilful misconduct or a breach of the contract, or breach of the applicable law or regulation by the owner/operator.
(iii) Owner/operator indemnifies the contractor against liabilities for removal costs and damages arising out of a discharge of oil from the vessel, except to the extent that:
(a) responder immunity applies under Federal or State law;
(b) the liabilities arise from the gross negligence or wilful misconduct of the contractor;
(c) owner/operator would not have been liable if sued direct;
(d) owner/operator would have been able to limit his liability; and
(e) the liability arises in respect of death or personal injury.

It is advisable that the contracts include a limit so that the total aggregate of all liabilities incurred cannot exceed the limit of Club cover.

4. **Warranties**
Contracts should contain warranties that the contractors (particularly for removal actions) will have and maintain all necessary Federal and State approvals/licences/ classifications.
5. **Classification**
The OSRO contract should contain a warranty that the OSRO maintains classification under Federal and State law (if applicable).
6. **Insurance**
Care should be taken to ensure that the contractor maintains adequate insurance.
7. **Law and jurisdiction**
With regard to choice of law and jurisdiction it is preferable to name the State of New York.

APPENDIX 2

STATES REQUIRING VESSEL RESPONSE PLANS

1. ALASKA
Vessel Response Plans (VRP), called "Oil Discharge Prevention and Contingency Plans", must be submitted and carried on board all tank vessels and oil tank barges.

2. CALIFORNIA
Vessel Response Plans, called "Vessel Contingency Plans", must be submitted and carried on board all tank vessels. A federally-approved VRP will be accepted as long as the additional information required by California is contained in an addendum to the plan.

3. **FLORIDA**
   Vessel Response Plans, called "Spill Prevention and Control Contingency Plans", must be carried on board all vessels capable of carrying 10,000 gallons or more of pollutants as fuel or cargo. A federally-approved ship-specific contingency plan will be accepted.
4. **LOUISIANA**
   Owners or operators of tank vessels are required to submit and carry on board Vessel Response Plans prepared in accordance with OPA 90.
5. **MAINE**
   All tank vessels must carry on board and have available for inspection, but need not submit, Vessel Response Plans prepared in accordance with OPA 90.
6. **MARYLAND**
   All vessels must carry on board, but need not submit, Vessel Response Plans prepared in accordance with OPA 90.
7. **NEW JERSEY**
   Vessel Response Plans, consisting of "Discharge Prevention, Control and Countermeasure Plans" and "Discharge Response, Clean-up and Removal Contingency Plans", are not required to be carried on board or submitted unless hazardous substances, including oil, are transferred between vessels.
8. **NEW YORK**
   Vessel Response Plans, consisting of "Habitat Protection Plans", not required to be carried on board or submitted unless petroleum is transferred between vessels.
9. **OREGON**
   Vessel Response Plans, called "Oil Spill Prevention and Emergency Response Plans", must be submitted and carried on board all tank vessels, and all cargo and passenger vessels of 300 gross tons or more.
10. **RHODE ISLAND**
    Vessel Response Plans currently are not required to be submitted, but may be required in the future pursuant to draft regulations that are under development.
11. **TEXAS**
    Any vessel with the capacity to carry 10,000 gallons or more of oil as fuel or cargo must carry on board but need not submit federally-approved vessel-specific response plans. Vessels required to prepare VRPs in accordance with OPA 90, must submit certain sections from the VRP: General Information & Introduction; Notification Procedures; List of Contacts; Geographic-Specific Appendices for applicable COTP zones in Texas; Vessel-Specific Appendices; and Shore-Based Response Activities. In addition, the vessel must submit a letter from the individual who submitted the VRP to the Coast Guard verifying that the sections submitted conform with those submitted to the Coast Guard, along with approval correspondence from the Coast Guard.

12. VIRGINIA

Vessel Response Plans, called "Oil Discharge Contingency Plans", must be submitted and carried on board all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of at least 15,000 gallons of oil. Tank vessel operators required to prepare VRPs in accordance with OPA 90 may submit copies of their U.S. Coast Guard-issued VRP approval letters in lieu of separate state plans.

13. WASHINGTON

Vessel Response Plans, called "Vessel Contingency Plans", must be submitted and carried on board by tank vessels (including those operating on the Columbia River), and all cargo vessels and passenger vessels of 300 or more gross tons that are operating on waters of the State. Cargo vessels and passenger vessels may join a Columbia River or Washington State oil spill co-operative in lieu of submitting a VRP. Tank vessels also must submit separate "Oil Spill Prevention Plans".

APPENDIX 3

CONTRACTS CONFORMING WITH THE INTERNATIONAL GROUP GUIDELINES ON VESSEL RESPONSE PLAN CONTRACTS

(The date of the "approved" version or other means of identification is inserted in the right hand column)

QUALIFIED INDIVIDUAL

	Identification
ABS	(5.2.93 - Rev. 1700)
Compliance Systems Inc	
Eco-Tankships	
Norwegian Marine Services	(1.6.93)
Rapid Response Corporation	(19.5.94)
SMQI	

SPILL MANAGER

	Identification
NRC	Amendment No. 4

QI / SPILL MANAGER

	Identification
Corbett & Holt	September 22, 1997
ECM/Hudson	Rev. 6/97
ECM/Hudson	Rev. 8/97 (similar to Rev. 6/97)
Gallagher Marine Systems	
Jamestown Tanker Contract	9 June 1997
Jamestown Non-tanker Contract	9 June 1997

Marispond (oil tankers)	20.2.95
Marispond non-tanker	May 1997
OOPS tanker	(28.1.93 Standard RM)
OOPS/O'Brien	(28.1.93 Standard QI)
OOPS for vessels other than tankers	Revised January 1, 1995
SMQI	

OIL SPILL RESPONSE ORGANISATIONS

	Identification
Clean Coastal Waters	Indemnity clause "approved"
Clean Harbors Environmental Services Inc	OGC080393
Clean Seas Contract Response Agreement	03/25/96 (pages 1 - 48) Attachment "A" - September 14, 1993 Attachment "B" - September 3, 1993 Attachment "C" - 10/01/95 Attachment "D" - 12/20/95
Donjon	
Donjon Environmental Marine Services	Version 8.1A
Foss Environmental Service Company (Tankers)	Vessel COTP Response Services Agreement 1/9/93 Number 6361 (General contract not "approved")
Garner Environmental Services Inc	Contract "approved" on (28/7/93) New contract not "approved"
Marispond (Tankers)	2-8-93
Marine Pollution Control (MPC)	Contract "approved" on (26/9/93)
Marine Spill Response Corporation (MSRC)	Version submitted 27/9/96
National Response Corporation Standard (Tankers)	July 1, 1994
National Response Corporation (Dry cargo)	October 1, 1995
NRC Pacific Alliance	Addendum 3
Pacific Environmental Corp (Hawaii) (Penco)	Contract "approved" on 13/10/93 (New contract not "approved")
Riedel Environmental Services	August 3,1993 - Legal Department 0876 (New contract not "approved")

SALVAGE, FIREFIGHTING AND EMERGENCY CONTRACTS

	Identification
Donjon Marine Co Inc	(Not 1996 version)
Smit Americas Inc	None. Effective as from 12.8.93 None. Effective as from 1.1.96 Rev. 3-96
Marine Response Alliance (MRA) Response per diem Salvage Towage	(15.2.94) There exists an amended agreement which has not been "approved"
Marine Response Alliance capacity lightering - tendering	There exists an amended agreement which has not been "approved"
Resolve Towing and Salvage	
Titan	
Titan Maritime Industries Inc.	
Weeks Jamestown	9 June 1997

PERSON IN CHARGE - TEXAS

	Identification
ECM/Hudson	Rev. 6/97
ECM/Hudson	Rev. 8/97 (similar to Rev. 6/97)
SMQI	

WILDLIFE REHABILITATION CONTRACTS

	Identification
Entrix	Agree1.doc
International Bird Rescue Research Center (IBRRC)	N.B. a not "approved" version is also circulating

CANADA

	Identification
Burrard Clean Western Canada (Marine Response Corporation) (Non-Bulk Oil)	Standard Ship (Non-Bulk), WCMRC September 29, 1995
Burrard Clean Western Canada (Marine Response Corporation) (Bulk Oil)	Standard Bulk Oil, WCMRC September 29, 1995
Eastern Canada Response Corporation Ltd Ship (Bulk Oil) Membership Agreement	Standard Bulk Oil ECRC August 31, 1995 Standard Ship Bulk Oil, ECRC April 1, 1996

Eastern Canada Response Corporation Ltd (Non-Bulk Oil)	Standard Ship (Non-Bulk) ECRC August 31, 1995 Standard Ship Non-Bulk, ECRC April 1, 1996
Great Lakes Response Corporation (Bulk Oil)	Standard Ship (Bulk Oil) GLRC April 1, 1996
Great Lakes Response Corporation (Non-Bulk Oil)	Standard Ship (Non-Bulk) GLRC August 31, 1995 Standard Ship (Non-Bulk) GLRC April 1, 1996

A new combined contract for ECRC, GLRC, Point Tupper and Alert for non-bulk oil shipments has been "approved" and will be issued shortly.

SPILL MANAGER
AUTHORISED INDIVIDUAL

	Identification
ECM/Hudson	Rev. 6/97
ECM/Hudson	Rev. 8/97 (similar to Rev. 6/97)
Jamestown Tanker Contract	9 June 1997
Jamestown Non-Tanker Contract	9 June 1997
Marispond Non-Tanker Contract	May 1997
OOPS (Tankers)	Canadian Addendum, February 1996
OOPS (Non-Tankers)	Canadian Addendum
SMQI	

APPENDIX 4

LIST OF CONTRACTORS WHO HAVE SUBMITTED CONTRACTS TO THE INTERNATIONAL GROUP WHICH HAVE NOT BEEN CONSIDERED TO COMPLY WITH INTERNATIONAL GROUP GUIDELINES

SPILL MANAGER

	Identification
ERST	
Global Protection Services Inc.	

PERSON IN CHARGE - TEXAS

	Identification
ABS	Rev. 15 February 1996

OIL SPILL RESPONSE ORGANISATIONS

Δ Contract not "approved" but indemnity clause "approved"

A&A Waste Oil Company (Environmental Services) Maryland
Alaska Chadux
Ancon
Ashco, Guam
Clean America Inc, Maryland
⊿ Clean Bay Incorporated Associate Members
⊿ Clean Coastal Waters Inc Associate Members
Clean Islands Council (Hawaii)
Clean Sound Co-operative
Cook Inlet Spill Prevention & Response, Alaska
Coos Bay, Oregon
Crowley Marine Services (Puerto Rico)
Delaware Bay S River Co-operative, Pennsylvania
Diversified Environmental Services, Tampa, Florida
Emergency Environmental Services
Environmental Recovery Group Inc
Florida Spill Response Corporation, Florida
Garner Environmental (new)
Guardian Environmental Service, Delaware
Guam Response Services (Ashco) (see above)
H&H
Industrial Clean-up Inc
International Technology Corporation
Marine Fire and Safety Association / Clean Rivers Co-operative
Marine Logistics Inc
Marine Response Alliance
Newport (Oregon) Enrollment Agreement
OVAC Inc, Lousiana
Penco new
Petrochem Recovery Services Inc
P.O.R.T.
Port of Newport / Yaquina Bay Oil Response Plan
Remac USA, Delaware
Riedel new
Seacoast Ocean Services (SOS), Maine
So-Cal Ship Services California
SEAPRO (South East Alaska Petroleum Resource Organisation)
WSMC - Washington State Maritime Co-operative Vessel Enrollment Agreement

SALVAGE, FIREFIGHTING AND EMERGENCY CONTRACTS N/A

	Identification

Marine Response Alliance (new)	
Marine Pollution Corporation (MPC)	
OMI Petrolink	

SALVAGE N/A

	Identification
Wijsmuller	

WILDLIFE REHABILITATION CONTRACTS N/A

	Identification
Tristate Bird Rescue	

CANADA

OSROS

	Identification
⊿ Point Tupper (Bulk Oil)	Indemnity Clause "approved". Final sentence of Cl. 6.9 (b) which deems charge out costs to be reasonable should be withdrawn.
⊿ Point Tupper (Non-Bulk Oil)	Indemnity Clause not "approved". Final sentence of Cl. 6.9 (b) which deems charge out costs to be reasonable should be withdrawn.
⊿ Alert (Bulk Oil)	Indemnity Clause "approved". Word "reasonable" should be inserted before "fees charged" in Clause 8.1.
⊿ Alert (Non-Bulk Oil)	Indemnity Clause "approved". Word "reasonable" should be inserted before "fees charged" in Clause 11.1.

AUTHORISED INDIVIDUAL

	Identification
ABS	
Gallagher Marine Systems Inc.	
Norwegian Marine Services	

IGA RENEWAL - THE CLUBS' RESPONSE TO THE EUROPEAN COMMISSION'S STATEMENT OF OBJECTIONS

As you may already know, the International Group of P&I Clubs has now formally replied to the European Commission's Statement of Objections in a Response delivered to the European Commission on 16th September 1997. Attached to this circular is a summary of the position and of the arguments presented by the Clubs in reply to the Statement of Objections.
The Managers will be pleased to provide a full copy of the Response to any Member who would like to review the details more fully.

INTERNATIONAL GROUP OF P&I CLUBS
78 Fenchurch Street, London EC3M 4BT

Secretary & Executive Officer: Telephone: 0171 488 0078
D.J.L. Watkins Fax: 0171 480 7877

The Group's views on the Statement of Objections
18 September 1997

Introduction

1. The Clubs are co-operatives of shipowners who share each others' protection and indemnity (P&I) claims on a mutual not-for-profit basis. Between them the Clubs in the International Group self-insure the P&I risks of about 90% of the world's ocean-going tonnage.
2. Shipowners contribute to the costs of their Club by making an initial payment and making further payments when the total costs of their Club for the year are known. For their larger claims (presently over $5 million) the Clubs have a claims-sharing arrangement, known as "the Pool", which operates on an at-cost basis. The spread of tonnage in the Pool enables the Clubs to minimise the volatility of contributions shipowners make to their Clubs and also to purchase cost-effective market reinsurance for catastrophe claims (presently from $30 million up to $2 billion).
3. The Club system is unique. It has existed and been developed over more than 100 years.
4. The operation of the Pool and the mutual system by which the Clubs operate are underpinned by the International Group Agreement ("IGA"). At the heart of the IGA lie the quotation procedures which were exempted by the Commission for a period of 10 years in 1985 by means of the *"1985 Decision."*
5. The exemption for the IGA expired on 20th February 1995. The Group contacted DGIV in January 1995 about applying to renew the exemption and, in February 1995, made a formal application to renew it.
6. That application occurred around the time that the Group was considering the extent of Club cover, an issue about which there had been extensive

debate within the Group for more than 20 years. For very many years the Clubs had provided *unlimited* cover. Although some Clubs were in favour of retaining unlimited cover, others wished to introduce a limit. After much debate, it was agreed that a limit on cover would be introduced on 20th February 1996. This was the so-called 20% limit - which in theory equates to about $18 billion. This limit applies to "overspill" cover i.e. cover above the reinsurance purchased by the Pool (which this year is $2 billion). Therefore total Group cover is about $20 billion. To date there has never been a claim under the overspill cover.

7. In 1995 the 20% limit was the subject of a formal complaint to the Commission by the Greek Shipping Co-operation Committee ("GSCC") which considered that the limit was too high.
8. Since 1995 the Group has had a number of meetings with officials of DGIV. Until May 1997 the Clubs understood that the Commission's Services did not have any serious issue to raise on the IGA, although they did express some concern about the extent of Club cover. In May the Group was informed that the Commission intended to issue a formal Statement of Objections ("SO"). The Commission's Services expressed the hope that this would lead to a dialogue with the Group and result in a satisfactory outcome. That hope was echoed in the Commission's Press Release which accompanied the issue of the SO.

The Statement of Objections

9. The SO was issued on 2 June 1997. It raises three issues about the Clubs' arrangements:
   (a) the "IGA issue";
   (b) the "extent of cover issue"; and
   (c) the "reinsurance issue".
10. The Group submitted its formal Response to the SO on 16th September, within the time limit set in the SO.

Steps taken by the Group since the SO was issued

11. The Group met with the Commission's Services (DGIV) in July and has considered very carefully the issues raised in the SO. It has taken steps which it considers should deal with the extent of cover and reinsurance issues.

Extent of cover issue

12. The SO expressed concern about the 20% limit. After receiving the SO, the Clubs have again considered the extent of Club cover. A number of Clubs wished to retain the 20% limit (and some would have preferred to return to unlimited cover). However, the Directors of all Clubs have unanimously decided to adopt a substantially lower level of cover as from 20th February 1998. The present 20% limit will be reduced to 2.5%, which in theory equates to about $2.25 billion. Assuming that the level of Pool reinsurance next year will again be $2 billion, total cover will be about $4.25 billion. The Group believes that the adoption of the new 2.5% limit should meet any concern about the extent of cover issue.
13. Subject to demand, shipowners will be free to make further arrangements for cover *in excess of* the new limit should they wish to do so *outside* the

Group's existing arrangements. As regards the suggestion in the SO that there should be different levels of cover *within* the level of Club cover, this would destroy the mutuality of interest between Club members that is the essence of the Club system and the Group's Response to the SO explains why such a suggestion is not practicable.

14. Moreover, as a matter of policy, it must be questionable whether it would be in the wider interests of the Community - as well as in the interests of the very large number of countries around the world that would be affected by such a decision -- to allow a minority of shipowners *to reduce* the level of their insurance cover below that which most shipowners want and are prepared to provide to each other through their Clubs. To do so would inevitably increase the possibility of a catastrophe occurring that was not adequately covered by insurance.

Reinsurance issue

15. The Pool sets out procedures by which a Club may be permitted to share in the Pool the reinsured claims of certain third party insurers. Although the SO does not suggest that the procedures have given rise to any problem in practice, it suggests that certain limited changes be made to them. The Group will be examining ways in which the Pool could be amended to meet the points raised in the SO and appropriate amendments are to be prepared for approval.
16. The Group believes, therefore, that it has dealt with the extent of cover issue; and that shortly it will have dealt also with the reinsurance issue. The orily issue in the SO that remains is the IGA issue.

The IGA issue

17. The Group continues to believe, as it did in 1985, that the IGA is indispensable and that it merits an exemption under Article 85(3).
18. There are two quotation procedures under the IGA where a shipowner is considering moving to another Club - which he is entirely free to do at the end of each policy year, which for historic reasons ends on 20th February.
19. The main procedure is the *20th February procedure.* This provides that if a shipowner decides to move to a new Club, he will have, for one year only, to pay to his new Club the rate that he would have been charged by his existing Club i.e. the rate justified by his existing Club's knowledge and understanding of the member's operations and claims record - *unless* an independent Expert Committee considers that the rate of his existing Club is *unreasonably high.* The alternative procedure is the *pre-30th September procedure* which was introduced in 1985 at the request of the Commission. This provides that a shipowner may move to a new Club at any rate that is *not unreasonably low* as long as he has agreed with the new Club by 30th September that he will move on the following 20th February. The reasonableness of the new Club's rate can be challenged before the Expert Committee.
20. Although there has been no relevant change of circumstances since 1985, the SO states that the quotation procedures in the IGA are no longer indispensable to the maintenance of the Pool and that the IGA does not merit exemption. The SO suggests that a less restrictive

arrangement should be adopted, although it does not suggest what that arrangement might be.

21. The IGA underpins the Pool. If the IGA were to be terminated there would be a *very serious risk* that the Pool would collapse. The Commission itself accepted in 1985 that there was a "strong likelihood" that this would happen.
22. In the Clubs' mutual not-for-profit system, unrestrained "price competition" would *not* reduce the total costs that shipowners as a whole incur; it would merely *alter the allocation of those costs between individual shipowners.* In doing so, it would be likely to cause *unfair rates* to be charged to some members and a *misallocation of costs* between them.
23. The IGA gives shipowners the assurance they need that all Club members make a fair and equitable contribution to each others' claims under the Group system; and that other shipowners are not gaining an unfair competitive advantage by paying too little to their Clubs for their P&I cover.
24. It is in *no-one's interest* to run the risk of the Pool collapsing. If this were to happen, shipowners' P&I costs would undoubtedly rise as would the costs of their customers. There would also be reduced levels of cover for third party claimants, especially for incidents involving large environmental accidents and loss of life, for which Group Clubs alone, through the Pool, provide high levels of cover.
25. The undoubted benefits of the Pool need to be weighed against the limited restrictions imposed by the IGA:
    - The form of the IGA was changed in 1985 to accommodate the requirements of the Commission; it has not changed since it was exempted in 1985.
    - The IGA in the form agreed with the Commission in 1985 is the *minimum protection* that the Clubs require.

      The IGA imposes only light restraints on the quotation of rates.
    - The IGA *does not* prevent a shipowner moving Clubs at the end of any policy year; it merely prevents him obtaining an *immediate and unfair* financial advantage from doing so.
    - Those most directly affected by the IGA are shipowners - and they support it. Since the SO was issued, all Club Boards have confirmed their support for the IGA, as have a large number of Shipowner Associations. GSCC indicated its support for the IGA in its Complaint to the Commission about the extent of cover issue.
    - There is extensive competition between Clubs, especially in relation to quality of service.
    - That the IGA is not unduly restrictive is clear from the regular and significant movement of tonnage between Clubs under the IGA procedure.
26. Without the cohesion and unity of purpose that the Pool provides the broader representative activities of the Group would be at risk. Shipowners, Governments and Inter-Governmental Organisations worldwide would no longer be able to look to the Group to make an

informed and authoritative contribution on maritime issues, for example, on environmental pollution or safety at sea.

Conclusion

27. The issue of the SO has caused considerable concern among the world's shipowners about the future of the P&I Club system which has proved so valuable to them and to the wider community for so many years.
28. The Clubs insure some 90% of total world shipping tonnage. Any action taken by the Commission would affect more shipowners *outside the Community* than *within the Community*. This is a reason for the Commission to proceed with caution.
29. The Group believes that, in the light of the changes it has made (and will shortly be making) and in the light also of the further information about the IGA provided in the Response to the SO, the Commission ought now be able to allay the fears of shipowners and approve the Group's arrangements.
30. The Group looks forward to a constructive dialogue with the Conunission about these matters.

THE INTERNATIONAL GROUP AGREEMENT - LIMIT ON CLUB COVER

You will be aware that the London Club is a member of the International Group of P&I Clubs and thus participates in the Group Pooling Agreement, under which Clubs share each other's claims which exceed US$5m, and in the International Group Agreement (IGA), under which a Club quoting for another Club's business will not quote a lower rate than the holding Club for the first year of entry following transfer.

In 1985 the International Group obtained from the European Commission's Competition Directorate, DGIV, a formal exemption for the IGA from the competition provisions of the Treaty of Rome on the basis that the rules for making quotations in the IGA were indispensable to the operation of the Group's claim-sharing arrangements because they were designed to maintain the principle of mutuality, continuity of membership, stability of premiums and continuation of the Pool arrangements.

In 1995 the International Group applied for renewal of this exemption. In June 1997, DGIV issued a Statement of Objections objecting:

1. to the quotation procedure in the IGA on the basis that it was a restriction on the Clubs' freedom of competition and was not necessary or indispensable to the operation of the Group's claim-sharing arrangements;
2. that the limit on cover offered by the Group, enshrined in the 20% compromise limitation proposal introduced in February 1996, did not meet the demand of a large number of shipowners for a lower limit on cover, restricted competition and was not necessary for the functioning of the Group's claim-sharing agreement.

Accordingly, the Statement of Objections requested the Group to modify its present arrangements in respect of the IGA quotation procedure and the limit on cover contained in the Pooling Agreement.

The Boards of directors and Committees of Clubs, including the London Club, considered these issues during July 1997 and agreed that:

1. the IGA is indispensable to the continued existence of claims-sharing through the Pool, the restraints in the IGA being the minimum necessary to maintain the system; and
2. the present limit on a Member's liability for an overspill claim should be reduced from 20% to 2.5% of his entered ships' limits of liability for property damage under the 1976 Limitation Convention. This new percentage is estimated to produce a total maximum aggregate of overspill calls of about US$2.25bn, which when added to the present limit on Group's reinsurance contract of US$2bn, produces a notional limit on Club cover - for claims other than oil pollution - of US$4.25bn. It is proposed that this new limit on overspill calls should take effect from the commencement of the next policy year on 20th February 1998. Since the London Club has argued consistently for a reduction in the percentage figure to 2% - 3%, the Committee had no difficulty in agreeing the Managers' recommendation for adoption of the 2.5% figure at its last meeting on 9th July 1997.

The Group will be lodging a formal response to DGIV's Statement of Objections by 16th September 1997. It will seek to persuade DGIV to withdraw its objections to the IGA and to the Pooling Agreement on the grounds that the IGA is indispensable to the continuation of the pooling system and that the demand amongst shipowners for a lower limit on cover has now been satisfied. A number of shipowners' associations both in Europe and around the world have written to DGIV to express their support for the continuation of the IGA.

The Managers will report further developments in due course.

REVISIONS OF THE TOVALOP CHARTERPARTY CLAUSE

Members were advised in December 1996 of the expiry of the TOVALOP Agreement on 20th February 1997, and of the fact that the TOVALOP clause would thus no longer be appropriate for inclusion in charterparties.

Whilst a number of tanker charterers have accepted these changes, others have sought to introduce new terms, under a revised TOVALOP charterparty clause, which may substantially increase the burden upon owners, and could affect their P&I cover, in the event of an oil pollution. These terms purport to exclude from general average any costs attributable to preventive measures taken to avoid or minimise pollution. Although pollution damages are not themselves allowed in general average under the 1994 York/Antwerp Rules, the costs of certain specified preventive measures are allowed. The exclusion of preventive measures, and other payments, is thus objectionable because it means that owners are required to bear costs which otherwise would be included in the general average adjustment.

Our recommendation is that any attempt to introduce these or similar terms into a charterparty - whether in the guise of revisions to the TOVALOP clause or otherwise - should be firmly resisted. Firstly, because the cessation of TOVALOP is entirely unconnected with, and does not affect, the allowance of pollution-related expenditure in general average. Secondly, because there is no justification for attempting to override the usual principles applicable to general average, most recently revised and now reflected in the York/Antwerp Rules 1994.

If Members are requested to amend any charterparty clauses dealing with general average, they will not prejudice their P&I cover by agreeing that "pollution damage" as defined in Clause 6(a) of the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage (CLC) shall not be deemed general average sacrifice or expenditure. However, Members should offer no such agreement in relation to preventive measures as defined under Clause 6(b) of the 1992 Protocol to CLC, or to other pollution-related payments.

The Managers will be pleased to advise Members who may be in any doubt concerning these or similar charterparty clauses.

CARRIAGE OF COAL

Members are referred to previous Group Circulars on this subject.

In September 1991 the Group circulated details of amendments to the coal entry in IMO's Code of Safe Practice for Solid Bulk Cargoes (BC Code). Subsequently, in March 1994 the Group issued a Circular drawing attention to the report of IMO's Marine Safety Committee which advised of research into procedures for monitoring carbon monoxide as a means of detecting the spontaneous heating of coal. The research has now been completed, and IMO has published further amendments to the BC Code as a supplement to the 1994 edition.

IMO has recommended that Administrations and other parties concerned be made aware of the changes and has invited them to bring the amendments to the attention of shipowners, operators, seafarers, shippers, terminal operators and all other parties concerned. It will be up to individual Administrations to incorporate the new amendments into their domestic legislation.

The existing requirements state that ships transporting coal should carry on board appropriate instruments for measuring methane, oxygen and carbon monoxide in the hold atmosphere and instruments to test the pH of the bilge water samples. The new amendments add that a means should be provided for testing the atmosphere in the space above the cargo without requiring entry into the cargo space. The revised entry contains a diagram highlighting a suitable arrangement.

The BC Code also states that the instruments should be serviced and calibrated regularly and that ships' personnel should be trained in their use. Thus it is important for ships to be provided with the relevant test equipment and for seafarers to receive such training before monitoring begins. Information relating to test equipment may be obtained from the Association.

The BC Code re-emphasises that prior to loading, the shipper or his appointed agent should provide in writing to the master the characteristics of the cargo and the recommended safe handling procedures for loading and transport of the cargo. As a minimum, the cargo's contract specifications for moisture content, sulphur content and size should be stated, and especially whether the cargo may be liable to emit methane or self-heat.

A new entry by way of an additional Appendix G details the monitoring procedures which should be provided together with procedures for the testing of equipment. The frequency of testing will depend on the information provided by the shipper and the results of the analysis of the atmosphere in the cargo space. A rise in levels of carbon monoxide may indicate a potential heating problem and expert advice should be obtained. However, temperature measuring devices should be provided to measure the temperature of the coal during loading and during the voyage without requiring entry into the cargo space.

Full details of the revised entry for coal can be obtained directly from IMO, or if Members have difficulty obtaining this information, directly from the Association. This Circular is only intended to highlight some of the requirements of the BC Code.

This Notice to Members supersedes all previous Notices on this subject.

TOVALOP

The members of The International Tanker Owners Pollution Federation Limited voted at their Annual General Meeting on 6th November in favour of a Special Resolution to terminate the TOVALOP Standing Agreement with effect from 20th February 1997. The Board of Directors of both ITOPF and CRISTAL Limited had previously agreed not to extend the TOVALOP Supplement and CRISTAL Contract when their current three year terms end on 20th February 1997.

Whilst the TOVALOP Agreement will end next February, ITOPF will remain in existence as a provider of a broad range of technical services to and on behalf of its tanker owner members and their P&I Clubs. Access to ITOPF's technical staff, who are available to attend at the site of oil spills anywhere in the world, will continue to be one of the principal benefits of ITOPF membership. Existing ITOPF members will remain members after TOVALOP ends in 1997, without any action on their part.

The ending of the voluntary agreements will result in changes from 20th February next in a number of areas:

(a) TOVALOP Certificates

ITOPF will no longer be issuing TOVALOP Certificates after the current policy year since TOVALOP will, of course, no longer exist. Some port authorities and others have in the past required sight of such Certificates before allowing tankers to load or discharge. Such authorities will need to amend their procedures and look instead to the Civil Liability Convention Certificates issued by the flag state. There may be authorities which will request sight of TOVALOP Certificates after 20th February 1997 and it is recommended that Members place a copy of this circular on their tankers so that it can be shown to anyone who makes such a request as an explanation as to why TOVALOP Certificates no longer exist. It is understood that ITOPF are planning to issue their own circular on the subject and to publicise in other ways the ending of TOVALOP Certificates.

(b) P&I Certificates of Entry

These will no longer contain the TOVALOP Extension Clause.

(c) TOVALOP Charter Party Clause

Under the standard P&I industry recommended TOVALOP Charter Party Clause, owners warrant that their vessels are participating tankers in TOVALOP and give charterers the right in certain circumstances to take measures at the owner's expense in response to spill or threat of a spill from the tanker. Such a clause is no longer appropriate and will not be recommended by the Association from 20th February next. It is understood that some charterers are considering replacing the present clause with a requirement that the owner remains a member of ITOPF, and there is no objection to such a requirement. Others may be proposing to amend the present clause merely by deleting the requirement that the tanker should be a participating tanker in TOVALOP, but retaining the right of charterers

in certain circumstances to conduct clean-up operations or threat removal measures at the tanker owner's expense. Such an express right is not believed to be appropriate any more since, while the granting of such a right was consistent with the whole voluntary compensation system set up by the TOVALOP and CRISTAL agreements, it is incompatible with a number of the provisions of the legal regimes of the 1969 Civil Liability Convention, 1971 Fund Convention and 1992 Protocols.

In the event that such clauses are agreed the Member may be committing himself to pay clean-up expenses or threat removal expenses which are not recoverable from the Association.

(d) Membership of ITOPF

(i) Existing members of ITOPF will remain members after TOVALOP expires, unless they take positive steps to withdraw. The Association strongly supports ITOPF and its technical services and believes that the benefits of continued membership are very great.

(ii) The Association will enter all new tanker owner and bareboat charterer Members into ITOPF unless any such owner or charterer specifically requests otherwise. A procedure will be introduced by the Association as part of the entry formalities to facilitate this process. The cost of membership in ITOPF for 1997/98 will be 0.8 of a UK penny per gross ton. This has for a long time been included in a tanker owner's overall premium agreed with the Association and paid by the Association to ITOPF. This will continue to be the case.

ITOPF is in direct contact with the Association as regards revised membership application procedures and meetings will be held in the next couple of months to resolve any outstanding issues. ITOPF will also be issuing a circular to all of its members explaining the changes and drawing their attention to new Terms and Conditions of ITOPF Membership. These Terms and Conditions will be contained in an ITOPF Members' Handbook, along with other useful information, that will be issued to all ITOPF members around 20th February 1997.

POLLUTION CHARTERPARTY CLAUSES

In March 1990 the Group circulated a recommended clause for inclusion in Charterparties of tankers. In order to reflect the 1992 Protocol to CLC, and the OPA requirements concerning certification which now apply in the United States, the original clause has been amended, and a new clause for non-tankers is recommended.

The two new clauses are attached.

FINANCIAL RESPONSIBILITY IN RESPECT OF POLLUTION (APPLICABLE TO ALL SELF PROPELLED TANK VESSELS AND TO NON-SELF PROPELLED TANK VESSELS CARRYING MORE THAN 2,000 TONS OF PERSISTENT OIL IN BULK AS CARGO)

(1) Owners warrant that throughout the currency of this Charter they will provide the vessel with the following certificates:
   (a) Certificates issued pursuant to the Civil Liability Convention 1969 ("CLC"), and pursuant to the 1992 protocols to the CLC, as and when in force.
   (b) Certificates issued pursuant to Section 1016 (a) of the Oil Pollution Act 1990, and Section 108 (a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended in accordance with Part 138 of Coast Guard Regulations 33 CFR, so long as these can be obtained by the Owners from or by ***(identify the applicable scheme or schemes)***.

(2) Notwithstanding anything whether printed or typed herein to the contrary,
   (a) save as required for compliance with paragraph (1) hereof, Owners shall not be required to establish or maintain financial security or responsibility in respect of oil or other pollution damage to enable the vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this Charter.
   (b) Charterers shall indemnify Owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the costs of any delay incurred by the vessel as a result of any failure by the Charterers promptly to give alternative voyage orders) whatsoever and howsoever arising which Owners may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (1) hereof.
   (c) Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which Charterers and/or the holders of any bill of lading issued pursuant to this Charter may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (1) hereof.

(3) Charterers warrant that the terms of this clause will be incorporated effectively into any bill of lading issued pursuant to this Charter.

FINANCIAL RESPONSIBILITY IN RESPECT OF POLLUTION (ALL SHIPS OTHER THAN SELF PROPELLED TANK VESSELS AND NON-SELF PROPELLED TANK VESSELS CARRYING MORE THAN 2,000 TONS OF PERSISTENT OIL IN BULK AS CARGO)

(1) Owners warrant that throughout the currency of this Charter they will provide the vessel with the following certificates:
   (a) Certificates issued pursuant to Section 311(p) of the U.S. Federal Water Pollution Control Act, as amended (Title 33 U.S. Code, Section 1321(p)) up to ***(insert the date upon which such certificate(s) is/are due to expire)***.
   (b) Certificates issued pursuant to Section 1016 (a) of the Oil Pollution Act 1990, and Section 108 (a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended in accordance with Part 138 of Coast Guard Regulations 33 CFR, from ***(indicate the earliest date upon which the Owners may be required to deliver the vessel into the Charter or, if later, the date inserted in sub-paragraph (a) above)***, so long as these can be obtained by the Owners from or by ***(identify the applicable scheme or schemes)***.

(2) Notwithstanding anything whether printed or typed herein to the contrary,
   (a) save as required for compliance with paragraph (1) hereof, Owners shall not be required to establish or maintain financial security or responsibility in respect of oil or other pollution damage to enable the vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this Charter.
   (b) Charterers shall indemnify Owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the costs of any delay incurred by the vessel as a result of any failure by the Charterers promptly to give alternative voyage orders) whatsoever and howsoever arising which Owners may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (1) hereof.
   (c) Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which Charterers and/or the holders of any bill of lading issued pursuant to this Charter may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (1) hereof.

(3) Charterers warrant that the terms of this clause will be incorporated effectively into any bill of lading issued pursuant to this Charter.

INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996

Although the New York Produce Exchange Form (NYPE) Charterparty has been in widespread use for many years, the cargo responsibility provisions do not readily enable Owners and Charterers to apportion responsibility for cargo claims. More than 25 years ago the International Group Clubs reached an agreement on a relatively simple formula for the apportionment of cargo claims which they would recommend to their Members. The NYPE Inter-Club Agreement seems to have become an industry standard in the sense that NYPE charterparties now routinely regulate the settlement of cargo claims between Owners and Charterers in accordance with the Agreement's formulae.

The Agreement was updated in 1984 to deal with one particular shortcoming relating to the time limit for the making of claims. Otherwise, there have been no significant changes.

Whilst the Agreement has worked very well, it has in certain areas become outdated and subject to certain legal anomalies, particularly with regard to its application to containerised cargo. In view of these deficiencies, a small Sub-Committee representing the International Group of P&I Clubs was given the task of producing a redrafted Agreement to reflect modern practices and to encourage its continued use.

The Inter-Club Agreement 1996 does not deviate from the fundamental nature of its predecessor and retains a mechanical approach to the apportionment of liability, which has been so successful in avoiding protracted and costly litigation.

Whilst the fundamental nature of the Agreement remains unchanged, the Agreement has been arranged in a more logically structured way to make it simpler, easier to read and therefore more user friendly. A number of redundant or unnecessary provisions have been removed.

The following new features should be noted:

- The definition of cargo claim(s) has been broadened and now includes related customs dues or fines, interest and certain costs.
- Claims arising under Through Transport or Combined Transport Bills of Lading are included but only when it is established that the cause of the loss or damage occurs between and including loading and discharge of the chartered vessel. Claims arising under other types of contracts of carriage, such as waybills and voyage charterparties are also included.
- The new time bar provision also caters for the possibility that the Hamburg Rules will apply.

A copy of the Inter-Club Agreement 1996 is attached herewith. It will take effect from 1st September 1996.

INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996

This Agreement is made on the 1st of September 1996 between the P&I Clubs being members of The International Group of P&I Associations listed below (hereafter referred to as "the Clubs").

This Agreement replaces the Inter Club Agreement 1984 in respect of all charterparties specified in clause (1) hereof and shall continue in force until varied or terminated. Any variation to be effective must be approved in writing by all the Clubs but it is open to any Club to withdraw from the Agreement on giving to all the other Clubs not less than three months' written notice thereof, such withdrawal to take effect at the expiration of that period. After the expiry of such notice the Agreement shall nevertheless continue as between all the Clubs, other than the Club giving such notice who shall remain bound by and be entitled to the benefit of this Agreement in respect of all Cargo Claims arising out of charterparties commenced prior to the expiration of such notice. The Clubs will recommend to their Members without qualification that their Members adopt this Agreement for the purpose of apportioning liability for claims in respect of cargo which arise under, out of or in connection with all charterparties on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms), whether or not this Agreement has been incorporated into such charterparties.

Scope of application

(1) This Agreement applies to any charterparty which is entered into after the date hereof on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms).

(2) The terms of this Agreement shall apply notwithstanding anything to the contrary in any other provision of the charterparty; in particular the provisions of clause (6) (time bar) shall apply notwithstanding any provision of the charterparty or rule of law to the contrary.

(3) For the purposes of this Agreement, Cargo Claim(s) mean claims for loss, damage, shortage (including slackage, ullage or pilferage), overcarriage of or delay to cargo including customs dues or fines in respect of such loss, damage, shortage, overcarriage or delay and include
   (a) any legal costs claimed by the original person making any such claim;
   (b) any interest claimed by the original person making any such claim;
   (c) all legal, Club correspondents' and experts' costs reasonably incurred in the defence of or in the settlement of the claim made by the original person, but shall not include any costs of whatsoever nature incurred in making a claim under this Agreement or in seeking an indemnity under the charterparty.

(4) Apportionment under this Agreement shall only be applied to Cargo Claims where:
   (a) the claim was made under a contract of carriage, whatever its form,
      (i) which was authorised under the charterparty;
      or
      (ii) which would have been authorised under the charterparty but for the inclusion in that contract of carriage of Through Transport or Combined Transport provisions,
      provided that
      (iii) in the case of contracts of carriage containing Through Transport or Combined Transport provisions (whether falling within (i) or (ii) above) the loss, damage, shortage, overcarriage or delay occurred after commencement of the loading of the cargo onto

the chartered vessel and prior to completion of its discharge from that vessel (the burden of proof being on the Charterer to establish that the loss, damage, shortage, overcarriage or delay did or did not so occur); and

(iv) the contract of carriage (or that part of the transit that comprised carriage on the chartered vessel) incorporated terms no less favourable to the carrier than the Hague or Hague Visby Rules, or, when compulsorily applicable by operation of law to the contract of carriage, the Hamburg Rules or any national law giving effect thereto

and

(b) the cargo responsibility clauses in the charterparty have not been materially amended. A material amendment is one which makes the liability, as between Owners and Charterers, for Cargo Claims clear. In particular, it is agreed solely for the purposes of this Agreement:

(i) that the addition of the words "and responsibility" in clause 8 of the New York Produce Exchange Form 1946 or 1993 or clause 8 of the Asbatime Form 1981, or any similar amendment of the charterparty making the Master responsible for cargo handling, is not a material amendment; and

(ii) that if the words "cargo claims" are added to the second sentence of clause 26 of the New York Produce Exchange Form 1946 or 1993 or clause 25 of the Asbatime Form 1981, apportionment under this Agreement shall not be applied under any circumstances even if the charterparty is made subject to the terms of this Agreement;

and

(c) the claim has been properly settled or compromised and paid.

(5) This Agreement applies regardless of legal forum or place of arbitration specified in the charterparty and regardless of any incorporation of the Hague, Hague Visby Rules or Hamburg Rules therein.

Time Bar

(6) Recovery under this Agreement by an Owner or Charterer shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given to the other party to the charterparty within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered, save that, where the Hamburg Rules or any national legislation giving effect thereto are compulsorily applicable by operation of law to the contract of carriage or to that part of the transit that comprised carriage on the chartered vessel, the period shall be 36 months. Such notification shall if possible include details of the contract of carriage, the nature of the claim and the amount claimed.

The apportionment

(7) The amount of any Cargo Claim to be apportioned under this Agreement shall be the amount in fact borne by the party to the charterparty seeking apportionment, regardless of whether that claim may be or has been apportioned by application of this Agreement to another charterparty.

(8) Cargo Claims shall be apportioned as follows:

(a) Claims in fact arising out of unseaworthiness and/or error or fault in navigation or management of the vessel

100% Owners

save where the Owner proves that the unseaworthiness was caused by the loading, stowage, lashing, discharge or other handling of the cargo, in which case the claim shall be apportioned under sub-clause (b).

(b) Claims in fact arising out of the loading, stowage, lashing, discharge, storage or other handling of cargo:

100% Charterers

unless the words "and responsibility" are added in clause 8 or there is a similar amendment making the Master responsible for cargo handling in which case:

50% Charterers
50% Owners

save where the Charterer proves that the failure properly to load, stow, lash, discharge or handle the cargo was caused by the unseaworthiness of the vessel in which case:

100% Owners

(c) Subject to (a) and (b) above, claims for shortage or overcarriage:

50% Charterers
50% Owners

unless there is clear and irrefutable evidence that the claim arose out of pilferage or act or neglect by one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

(d) All other cargo claims whatsoever (including claims for delay to cargo):

50% Charterers
50% Owners

unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

Governing Law

(9) This Agreement shall be subject to English Law and Jurisdiction, unless it is incorporated into the charterparty (or the settlement of claims in respect of cargo under the charterparty is made subject to this Agreement), in which case it shall be subject to the law and jurisdiction provisions governing the charterparty.

LIMIT ON CLUB COVER

We refer to our letter of 12th April attaching a questionnaire on this subject for completion and return by 15th May.

We now write to advise you of the replies received from Members.

Replies have been received to date from Members representing 495 ships or 51% of the Club's total number of directly entered vessels and 14.8m gt or 58% of the Club's directly entered tonnage.

Of those replies, Members representing 92% of the tonnage for which responses were received were in favour of the limit on Members' liability for Overspill Calls being fixed at a level which is realistically collectible from Members - as opposed to the present '20%' compromise solution - and Members representing 89% of the tonnage for which replies were received supported the Committee's campaign for a reduction in the level of Members' limits for Overspill Calls as a percentage of entered ships' Convention limits for property damage to 2-3%.

Of those Members in favour of a realistically collectible limit, Members representing 84% of the total tonnage for which replies were received, were, in the alternative, in favour of fixing the limit on cover at the level at which the Group is able to obtain reinsurance at reasonable cost.

In addition, Members representing 7% of the tonnage for which replies were received, supported only the option of fixing the limit on cover at the level at which the Group is able to obtain reinsurance at reasonable cost.

Finally, one Member representing 0.3% of the tonnage for which replies were received preferred the present '20%' compromise solution to a level which is realistically collectible from Members.

Of the total tonnage for which replies were received 42% is Greek-managed, 34% is managed in the Far East and 23% is managed in Europe and the Eastern Mediterranean.

Members who have not yet replied to the questionnaire are kindly requested to do so as a full response from the membership will obviously carry much greater weight in the debate; and a further copy of the questionnaire is attached herewith.

It is known that the Swedish, Newcastle and the West of England Clubs have sent similar questionnaires to their Members. It was recently reported in the shipping press that Members of the Newcastle Club 'unanimously supported a lower limit' and that about 60% of the Swedish Club's Membership by tonnage had responded to its questionnaire of whom a clear majority of 70% supported the introduction of a much lower limit on Club cover. The West of England sent out their questionnaire in May and asked for replies by 20th June.

In view of the replies received, the Committee and the Managers will continue its campaign for a reduction in the level of Members' limits for Overspill Calls as a percentage of entered ships' Convention limits for property damage to 2-3%.

1992 CLC CERTIFICATES - JAPAN

We refer to our Circular of 4th March 1996 advising that the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969 (1992 CLC) comes into force in various countries on 30th May 1996.

We also advised that these countries would continue to accept 1969 CLC Certificates from ships registered in States which have not yet ratified 1992 CLC; since States which ratify 1992 CLC remain parties to the 1969 CLC as well.

However, Japan is now an exception to this principle, since, under a Japanese law bringing the 1992 CLC into force from 30th May 1996, all tankers entering Japanese ports after 30th May 1996 and carrying more than 2,000 tons of oil in bulk, will be obliged to carry a 1992 CLC Certificate, even if the ship is registered in a State which has not yet ratified 1992 CLC and already has an existing valid 1969 CLC Certificate on board.

Since States, which are parties to the 1969 CLC but not parties to the 1992 CLC, will not be prepared to provide 1992 CLC Certificates, the Japanese Ministry of Transport has indicated that it will issue 1992 CLC Certificates against documentation provided by the Owners.

The Ministry of Transport will require a completed application form together with:

(i) Evidence of insurance in the form of a current Certificate of Entry from the Association;
(ii) a copy of the ship's Certificate of Registry;
(iii) a copy of the International Tonnage Certificate;
(iv) a copy of a valid 1969 CLC Certificate;
(v) an appropriate Power of Attorney if the applicant is not the registered owner; and
(vi) the appropriate fee of Yen 10,800 per ship which should be paid in revenue stamps.

The Ministry of Transport will not accept applications by mail, so Members will have to appoint an agent to make the application.

Thus, Members owning or operating tankers which they intend to trade to Japan after 30th May 1996 and which do not already have a valid 1992 CLC Certificate will have to apply for a Japanese 1992 CLC Certificate, through local agents. The Association's two correspondents in Japan, Inchcape P&I (Japan) Ltd., and Thoresen & Co. (Japan) Ltd., can both assist Members in making applications.

The correspondents' contact details are as follows:

Inchcape P & I (Japan) Ltd.,
Jimbo-cho TS Building, 8th Floor,
7-3, Kanda Jimbo-cho 2-chome,
Chiyoda-ku, Tokyo 101.
Tel: (03)3259-1331
Fax: (03)3259-1337/1338
Tlx: J22602 PNIINC

Thoresen & Co. (Japan) Ltd.,
Yodachu Building,
No. 14-9 Kyobashi 1 Chome,
Chuo-Ku, Tokyo, 104.
Tel: (03)3567-6526 (5 lines)
Fax: (03)3564-2238
Tlx: TOK 0252-2163

LIMIT ON CLUB COVER

We refer to our earlier letters regarding the "20 per cent" compromise limitation proposal and the adoption by Members of Class 5, the P&I Class, at a meeting on 24th January 1996 of the Rule changes necessary to implement the compromise limitation proposal.

All of the Clubs in the International Group adopted the necessary Rule changes and the "20 per cent" compromise proposal was implemented by the Group and incorporated into a new Pooling Agreement, with effect from the commencement of the current policy year on 20th February 1996.

In November 1995, the UK Club sent a questionnaire to its Members asking if, irrespective of whether they supported the "20 per cent" compromise proposal, they agreed with the Board's longer term strategy of seeking to achieve a limit on cover at a realistically collectible level.

At its last meeting on 24th January 1996, your Committee heard that the responses received to the UK Club's questionnaire indicated overwhelming support by its Members for its Board's strategy. Significant levels of response were received from its Members in North America, Scandinavia, the Middle East, the United Kingdom, France, Germany, the Far East and Greece. The Committee and the Managers then decided to send a questionnaire to Members seeking your views on this subject. We understand that the Swedish and West of England Clubs are intending to send out similar questionnaires to their Members.

Those Clubs which have been in favour of a limit on cover, the UK, the West of England, the London, the Newcastle and the Swedish Club, would like Members' liability for Overspill Calls to be limited to a figure which is realistically collectible from them. Of those Clubs, who were in favour of maintaining unlimited cover, the Board of the North of England Club, has instructed its Managers actively to pursue efforts to reach a level of limitation which will satisfy all Clubs; and its Managers have suggested that fixing Member limits at 5% of Convention limits for property damage, producing a theoretical limit of about $5bn, might meet with general support.

However, the other Clubs who have been, in principle, in favour of maintaining unlimited cover, prefer a figure which is quite obviously not realistically collectible from shipowners and this is why they support the Acompromise≅ figure of 20% of Convention limits, producing a notional fund of about $20bn. They say that it will be quite obvious to claimants and everybody else that $20bn is not collectible from shipowners and therefore claimants will be left guessing as to what overall figure is collectible from shipowners and what the limit on Club cover actually is from the practical point of view. As a result claimants will have no 'target' figure to aim for. Therefore, in practice, the "20 per cent" compromise solution actually maintains unlimited cover from the practical point of view or, in the words of the Britannia Club circular, 'preserves the essential features of the existing system'.

Therefore, in asking you to express a view as to the level of cover which you prefer, you must decide, whether, in principle, you prefer a figure which is

sufficiently high not to be realistically collectible from shipowners or a lower figure which is realistically collectible from shipowners.

The Committee and the Managers are strongly of the view that the limit of Members' liability for Overspill Calls should be set at a figure which is realistically collectible from shipowners. We believe that a majority of the Club's Members support this view; but we do not assume this to be the case; and those Members who are quite content with the current 20% or $20bn limit should indicate so in their reply to the questionnaire.

For those Members who are in favour of a limit at a realistically collectible level, the following factors should be borne in mind in deciding what that limit should be:

1. 2% of Convention limits for property damage represents a total of Member limits of about $2bn for all of the International Group tonnage.
2. 3% of Convention limits represents total Member limits of about $3bn.
3. 5% of Convention limits represents total Member limits of about $5bn.
4. On the basis of this Club's present contribution to Pool claims, a claim of $3.5bn producing an overspill claim of $2bn would result in an additional Call on Members of over 170% of current Advance Call levels; a claim of $4.5bn producing an overspill claim of $3bn would result in an additional Call of over 250% of current Advance Call levels and a claim of $6.5bn producing an overspill claim of $5bn would result in a Call of over 430% of Advance Call levels.
5. In determining the limit on Club Cover which you prefer, you should consider what is the maximum amount of the Overspill Call, as a multiple of current Advance Call levels, which is realistically collectible from Members. If you consider that 170% of current Advance Call levels is the maximum, then you should favour a limit on Club cover of about $2bn, which is produced by fixing Member limits at 2% of Convention limits for property damage.
6. It appears likely that all International Group Clubs could obtain reinsurance for their shares of an overspill claim of $0.5bn, at reasonable cost, thus protecting their Members against a claim up to $2bn.

A questionnaire is attached seeking your views.

Your replies will be greatly appreciated and will assist the Committee in deciding its future objective and strategy on this very important subject.

We should be grateful if you would let us have your replies by 15th May.

Please do not hesitate to add any further comments on this subject which you would like the Committee to consider.

QUESTIONNAIRE

1. Are you in favour of the limit on Members' liability for Overspill Calls being fixed at a level which is realistically collectible from Members, or are you content with the present "20 per cent" compromise solution? Please indicate your preference:

   Realistically collectible ☐ 20 per cent ☐

2. If you prefer a limit at a realistically collectible level, do you support the Committee's campaign for a reduction in the level of Members' limits for Overspill Calls as a percentage of entered ships' Convention limits for property damage to 2-3%?

   Yes ☐ No ☐

   If you are in favour of a different percentage, please indicate the figure you prefer

   ☐

3. Alternatively, are you in favour of fixing the limit on cover at the level at which the Group is able to obtain reinsurance at reasonable cost, so that Members are not exposed to any overspill claim at all? It presently appears that the Group could obtain reinsurance at reasonable cost up to $2bn.

   Yes ☐ No ☐

Name and position:-

.....

Company:-

.....
(please complete)

Please reply by fax to:

M.G. Edmiston,
A. Bilbrough & Co. Ltd. (Managers),
50 Leman Street,
London, E1 8HQ

Fax No: +44 171 772 8200

CANADIAN OIL POLLUTION - BULK OIL CARGO FEES

Within the Association's Circular of 15th January, the Managers advised Members that the major Oil-Handling Facilities on the East and West Coasts, the St. Lawrence and the Great Lakes became designated Oil-Handling Facilities with effect from 9th December 1995 and that from such date they were required to have their own Arrangements with Response Organisations and to have their own Oil Pollution Emergency Plans in place. In consequence, from 9th December, the vessel ceased to be responsible for payment of the Bulk Oil Cargo Fees (BOCF) since such fees became payable by the Oil-Handling Facilities under the terms of their Arrangements with their Response Organisations.

The Managers also drew Members' attention to the fact that one Response Organisation, PTMS, was an exception to this rule because, unlike the position prevailing under the WCMRC, GLRCC, ECRC and ALERT contracts, PTMS requires vessels, rather than the designated Oil-Handling Facilities, to pay the BOCF.

It has now come to the Managers' attention that the North Atlantic Refining Co. Ltd. Come-By-Chance Refinery, although coming within the jurisdiction of ECRC, has not entered into an Arrangement with ECRC and, in consequence, ECRC will be seeking to recover the BOCF from vessels rather than this Facility. In this regard, Members need to appreciate that in entering into their contract with, in this instance, ECRC the Shipowner undertakes to pay the BOCF in circumstances where the Oil-Handling Facility is not a Member Facility of ECRC.

In these circumstances, the Managers would wish to repeat the recommendation contained within the Circular of 15th January that Members incorporate within their charters a suitable provision to ensure that if the vessel is liable to pay the BOCF the Charterer shall either pay for or indemnify the Owner for the same.

In the meantime, and given that the North Atlantic Refining Co. Ltd. is currently committing an offence under the Canada Shipping Act in failing to have an Arrangement with a Response Organisation, the Managers are hopeful that this Facility will be persuaded to enter into an appropriate arrangement with ECRC and will further notify Members in the event of this.

CLC CERTIFICATES

On 30th May 1996, the 1992 Civil Liability Convention (CLC) comes into force in the following States: Denmark, Mexico, Egypt, Norway, France, Oman, Germany, Sweden, Japan and the United Kingdom

The dates for entry into force in other countries are:

Spain	6th July 1996
Liberia	5th October 1996
Australia	9th October 1996
Greece	9th October 1996
Marshall Islands	16th October 1996
Finland	24th November 1996

Because all of these countries had already ratified the 1969 Convention, they will continue to accept 1969 CLC Certificates issued by countries which have not ratified the 1992 Convention until some time in 1997. However they will require a 1992 CLC Certificate to be on board a vessel of a flag state which has ratified the 1992 Convention. Thus vessels registered in States which have ratified the 1992 Convention will need Certificates under both Conventions. Unless otherwise requested, the "Blue Cards" issued by the Club for the 1996/97 Policy Year confirm cover under both the 1969 and the 1992 Conventions.

LIBERIA AND MARSHALL ISLANDS

CLC Certificates for Liberian and Marshall Islands flag vessels are issued by International Registries in Reston, Virginia, and these Certificates have taken a variety of forms, including:

- Certificates under the 1969 Convention valid from 20th February 1996 to 30th May 1996.
- Certificates under the 1992 Convention valid from 20th February 1996 to 20th February 1997.
- Certificates under the 1969 and the 1992 Conventions valid from 20th February 1996 to 20th February 1997.

International Registries have now confirmed that they will in the future issue Certificates in accordance with the Club "Blue Cards", but some of the Certificates which have already been issued may contain discrepancies. Members are therefore advised to check their Certificates for the points set out below, in order to ensure their acceptability in both 1969 and 1992 CLC countries:

1 The Certificate should reflect the "Blue Card" submitted to the Registry.

2 If the Registry has provided a 1969 CLC Certificate which is valid only from 20th February to 30th May 1996, it will need to be extended, and the Registry will do so (without charge) up to 4th October 1996. In order to obtain an extension to the end of the Policy Year (20th February 1997), a new "Blue Card" (covering both Conventions) should be submitted before the end of May 1996, together with a fee of US$100.

3 If the Certificate covers only 1992 CLC liabilities, the Registry should be requested to issue a new Certificate covering liabilities under both the 1969 and the 1992 Conventions.

For the 1996/97 Policy Year, Members are advised to ensure that a copy of the relevant "Blue Card", as well as the CLC Certificate, is carried on board each of their vessels.

CANADIAN OIL POLLUTION

We refer to our Circulars of July, October and November 1995.

Approval of Response Organisations' Contracts

In addition to the 31st August 1995 versions of the contracts issued by WCMRC, GLRCC and ECRC, the 15th October 1995 version of the contract issued by ALERT has now been approved by the International Group, subject to the recommendation that Members seek amendment of the provisions regarding the payment of ALERT's fees to make it clear that Members undertake to pay ALERT's reasonable fees. Experience to date tends to confirm ALERT's readiness to accept this amendment.

The PTMS contract remains unacceptable to the International Group, despite earlier indications from PTMS that they were working towards a contract which would be similar, in all material respects, to the contracts of the other four Response Organisations. The contractual provision concerning indemnities is that which currently presents most difficulty because PTMS requires Owners to indemnify them for any liabilities which they may incur except those arising due to their gross negligence, whereas the other Response Organisations require Owners to indemnify them for any liabilities they may incur except those arising due to their (ordinary) negligence.

PTMS is owned by U.S. interests and the indemnity provisions in the PTMS contract have evidently been drafted with the OPA 90 responder immunity provisions in mind (namely, OPA 90, Section 4201, which provides, inter alia, that a Response Organisation is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President, unless the Response Organisation is grossly negligent or engages in willful misconduct) rather than the relevant provisions of the Canada Shipping Act (namely, CSA, Section 678.1(2), which provides, inter alia, that no Response Organisation is liable, either civilly or criminally, in respect of any act or omission done as a Response Organisation unless it is shown that such conduct was not reasonable in the circumstances). It is hoped that this impasse will be resolved shortly, and which may be possible through PTMS' purchase of insurance to cover this "liability gap".

We annex to this Circular contact details with respect to the Response Organisations and also the Canadian Chamber of Shipping, which holds itself out as ready and able to assist Owners with the procedures necessary to enter into arrangements with WCMRC, GLRCC and ECRC.

Designation of Oil-Handling Facilities

The major Oil-Handling Facilities on the East and West Coasts, the St. Lawrence, and the Great Lakes became designated Oil-Handling Facilities as of 9th December, and from which date they have been required to have their own Arrangements with Response Organisations and to have their own oil pollution emergency plans in place. In consequence, from 9th December

Tanker Owners ceased to be responsible for payment of the Bulk Oil Cargo Fees (BOCF), such fees becoming payable by the Oil-Handling Facilities under the terms of their Arrangements with their Response Organisations.

However, and as Members were advised within our November Circular, an exception exists in the case of those Oil-Handling Facilities having an Arrangement with PTMS because, regardless of the fact that the Point Tupper Terminal has become a designated terminal, PTMS, under the terms of its current contract, requires tankers rather than the designated terminal to pay the BOCF (currently CAD0.225 per tonne).

A list of such designated Oil-Handling Facilities is appended to this Circular for the assistance of Members, since it would be prudent for Members to establish whether their vessels are bound for designated terminals in order to avoid having to pay the BOCF. Indeed, wherever possible Members will wish to incorporate within their charters the requirement that in the event of trading to Canadian ports the Charterer will nominate designated facilities and that if a non-designated facility is nominated, or the ship is liable to pay the BOCF(as it will be to PTMS), the Charterer shall either pay for or indemnify the Owner for the BOCF.

The Shipboard Declaration

The Managers have received a number of enquiries regarding what may be the most appropriate way to draw up and complete the Declaration, which vessels entering internal Canadian waters are required to have on board. We append to this Circular a specimen Declaration.

Clarification of Rules on Innocent Passage

In its Issues Update of 4th December, the Canadian Coast Guard clarifies that non-Canadian ships transiting, and not loading or unloading oil, in Canada's Territorial Seas and Fishing Zones are not required to have Arrangements with Response Organisations or have a Declaration onboard. The requirement will apply to non-Canadian ships on innocent passage within Canada's inland waters, which is to say, essentially, those waters inside the baselines of the Territorial Seas. Specifically, the CCG clarifies that non-Canadian ships transiting the *inside passage and the Canadian side of the Strait of Juan de Fuca* are required to have an Arrangement and a Declaration.

Appointment of an On-Scene Commander

In our July Circular, we commented upon the fact that the new Canadian oil pollution regime envisaged the ship's appointment of an 'On-Scene Commander' after the fact of at least a more serious spill and observed that, due to the apparent absence in Canada of any suitable service industry akin to that which exists in the USA, Members would appear to be obliged to bring in such expertise from outside Canada. Having more recently received the CCG's publication entitled 'Canada's New Marine Spill Response Regime - Policies for On-Scene Commander and Federal Monitoring Officer', it would appear that the CCG has it in mind to require a very considerable degree of knowledge and experience of the On-Scene Commander (including in-depth

knowledge of Canadian national/regional/area contingency plans; federal, provincial and municipal laws and regulations; and the roles and responsibilities of federal, provincial and municipal authorities).

However, The Association's Canadian Correspondents have clarified that, currently, the 'On-Scene Commander' has no legal status and that there is not in fact any legal requirement of any ship to appoint an 'On-Scene Commander'. The polluting ship's official representative is the 'Authorised Person' (or persons) named in the ship's Declaration. The 'Authorised Person' need not be 'on-scene' but will always be at liberty to seek advice from a person who is.

It seems clear that in the event of a serious oil spill in Canadian waters the CCG may be expected to become closely involved and will be represented by a Federal Monitoring Officer who will have the skills of an 'On-Scene Commander' but will not take command unless the polluter is unwilling or unable to do so or is not managing the response in a manner satisfactory to the CCG. In the circumstances, the Shipowner and his P&I Club may be expected to appoint a suitably qualified oil spill response expert (whether from within or without Canada) to liaise with the CCG and the concerned Response Organisation (which will be fully conversant with Canada's national, regional and area contingency plans), while the Club's Correspondents will provide advice upon material laws and regulations.

CANADIAN RESPONSE ORGANISATIONS

Western Canada Marine Response Corporation
555 Hastings Street,
Suite 1150, P.O. Box 12105,
Vancouver B.C. V6B 4N6
Tel: (604) 681 2351
Fax: (604) 681 4364
Contact: Ron Cartwright, Executive Director
For WCMRC contact may also be made through The Chamber of Shipping of British Columbia.
Tel: (604) 681 2351
Fax: (604) 681 4364

Eastern Canada Response Corporation Ltd.
Atlantic Division
41 Mount Hope Avenue
Woodside Industrial Park
Dartmouth, Nova Scotia B2Y 4R4
Tel: (902) 461 9170
Fax: (902) 461 9590
Contact: Jim Carson, Manager, Atlantic Region.

Quebec Division
281 Rue de l'Estuaire
C.P. 1653 Terminus Postal
Quebec Q.C. G1K 7J8
Tel: (418) 692 8989
Fax: (418) 694 9649
Contact: Pierre Samson, Manager Quebec Region.

Great Lakes Response Corporation of Canada
291 St. Clair Parkway
P.O. Box 788
Corunna, Ontario N0N 1GO
Tel: (519) 862 2281/82
Fax: (519) 862 3510
Contact: Charles Bailey, Manager Ontario Region
The Corporate Headquarters of ECRC and GLRCC is:
Canadian Marine Response Management Corporation
275 Slater Street
Suite 1201
Ottawa, Ontario K1P 5H9
Tel: (613) 230 7369
Fax: (613) 230 7344
Contact: Paul Pouliotte, Manager of Finance & Administration

For ECRC and GLRCC contact may also be made through:

The Shipping Federation of Canada
300 du Saint-Sacrement Street
Suite 326
Montreal, Canada H2Y 1X4
Tel: (514) 849-2325
Fax: (514) 849-6992
Contact: Captain Ivan A. Lantz, Manager, Marine Operations

24 Hour Emergency Contact Number for WCMRC, ECRC and GLRCC: (613) 930-9690

Point Tupper Marine Services Ltd.

(Mailing Address)
P.O. Box 138
Port Hastings, Nova Scotia
B0E 2T0

(Street Address):
3817 Port Malcolm Road
Port Hawkesbury, Nova Scotia
B0E 2V0

Tel: (902) 625 3611/1711
Fax: (902) 625 3098

ALERT (Atlantic Emergency Response Team)
P.O. Box 2353
Saint John, NB
E2L 3V6
Tel: (506) 632 4499
Fax: (506) 633 4450
Contact: Steve Jarvis

DESIGNATED OIL-HANDLING FACILITIES
AS AT 9TH DECEMBER 1995

Newfoundland
Newfoundland and Labrador Hydro
Holyrood Generating Station
Holyrood, Nfld.
North Atlantic Refining Co. Ltd.
Come by Chance Refinery
Come by Chance, Nfld.

Nova Scotia
Imperial Oil Ltd.
Dartmouth Refinery
Dartmouth, N.S.

Irving Oil Ltd.
Woodside Branch
Dartmouth, N.S.

New Brunswick (Continued)

Nova Scotia (Continued)
Nova Scotia Power
Tuffs Cove-Dartmouth
Halifax, N.S.
Statia Point Tupper Terminal
Port Hawkesbury N.S.
Ultramar Canada Inc.
Ultramar Eastern Passage
Eastern Passage, N.S.

New Brunswick
Avenor Maritime Inc.
Dalhousie, N.B.
Irving Oil Ltd.
Canaport Terminal
Saint John, N.B.

Irving Oil Ltd.

Courtney Bay Terminal
Courtney Bay, N.B.
Imperial Oil Ltd.
Saint John Terminal
Saint John, N.B.
New Brunswick Power
Dalhousie Generating Station Dock
Dalhousie, N.B.

Quebec
Daishowa Forest Products
Port of Quebec
Quebec, Que.

Esso Imperial Oil Ltd.
Tanker Wharf
Sept-Iles, Que.

Groupe Petrolier Norcan Inc.
Norcan Terminal
Montreal, Que.

Hydro Quebec
Tracy Thermal Centre
Sorel, Que.

IMTT Quebec Inc.
Battures de Beauport-Wharf 50
Limoilou, Que.

Kildair Service Ltee.
Marine Depot
Saint-Paul-de-Joliette, Que.

Olco Inc.
Battures de Beauport Terminal
Limoilou, Que.

Olco Inc.
Olco Terminal, Section 94
Port of Montreal
Montreal, Que.

Petro Canada
Montreal Refinery
Montreal, Que.

Petroliere Imperiale
Wharves 101 and 102
Montreal, Que.

Quebec (Continued)
Sunoco Inc.
Montreal East Terminal-Wharf 104
Montreal, Que.

Ultramar Canada Inc.
Saint-Romuald
Levis, Que.

Ultramar Canada Inc.
Port of Quebec-Cartier Mines
Port-Cartier, Que.

Ultramar Canada Inc.
Marine Terminal
Montreal, Que.

Wabush Mines
Pointe Noire
Sept-Iles, Que.

Ontario
Shell Canada Products Ltd.
Sarnia Refinery
Sarnia, Ont.

Sunoco Inc.
Sarnia Refinery
Sarnia, Ont.

British Columbia
Chevron Canada Ltd.
Burnaby Marine Terminal
Burnaby B.C.

Esso Imperial Oil Ltd.
Ioco Distribution Terminal
Port Moody, B.C.

Petro Canada Inc.
Port Moody Terminal
Port Moody B.C.

Shell Canada
Shellburn Refinery
Burnaby B.C.

Trans Mountain Pipe Line Co. Ltd.
Westridge Marine Terminal
Vancouver B.C.

DECLARATION FOR A SHIP THAT IS IN WATERS SOUTH OF THE SIXTIETH PARALLEL OF NORTH LATITUDE

Pursuant to subparagraph 660.2(2)(c)(i) of the *Canada Shipping Act*, I declare that:

(a) with respect to pollution insurance coverage, the ship's insurer is:

The London Steam-Ship Owners' Mutual Insurance Association Ltd.,
50 Leman Street, London, E1 8HQ
Telephone number: (44) 0171 772 8000
Facsimile number: (44) 0171 772 8200

Local correspondent:

[it would seem appropriate to enter the name(s) of the Association's local correspondent(s) together with their address(es) and telephone/facsimile numbers, including out-of-hours numbers]

(b) in accordance with paragraph 660.2(2)(b) of the *Canada Shipping Act*, I have an arrangement with the certified response organisation known as:

[insert the name(s) of the relevant Response Organisation(s)]

(c) the arrangement is in respect of 10,000 tonnes of oil

and in respect of the following waters:

[insert the geographical area(s) of responsibility of the relevant Response Organisation(s) as particularised within our Circular of October 1995]

(d) pursuant to subparagraph 660.2(2)(c)(iii) of the *Canada Shipping Act*,

(i) the following persons are authorised to implement the arrangement described in paragraph (b):

[enter details of the ship's Master and/or Owner/Operator's shoreside designated responsible officer and/or Canada-based authorised person (name, telephone, fax or telex number)]

(ii) the following persons are authorised to implement the shipboard oil pollution emergency plan required by section 45.2 of the *Oil Pollution Prevention Regulations*:

[enter details of the ship's Master (name, telephone, fax or telex number)]

....
(Signed by the Master or Owner) (Date)

INSTITUTE TIME CLAUSES (ITC) HULLS 1.11.95

Members will no doubt be aware that property underwriters have been increasingly reluctant to bear pollution liabilities and anti-pollution expenses incurred as a result of or to facilitate salvage or other General Average (G.A.) acts, despite the fact that such liabilities result from endeavours to save property rather than as a direct consequence of a casualty. The perception that P&I rather than property underwriters should bear the majority of such exposure has resulted in a shifting of risks. One example of this development is the amendment, despite objections, as from 31st December 1994 of the York-Antwerp Rules which now provide that "... losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure shall not be allowed in G.A.". When excluded from G.A. for this reason, these "losses, damages and expenses" do essentially fall within the scope of the P&I Rules even though they are incurred as a result of endeavours to save property, the beneficiaries being property underwriters.

However, the "... cost of measures undertaken to **prevent or minimise** damage to the environment ..." may still be allowed in certain circumstances under Rule XI(d) of the York-Antwerp Rules 1994 and the ship's proportion would prima facie be recoverable from hull underwriters under the traditional form of hull insurance. Hull & machinery insurance offered by the London market is customarily based on Institute Time Clauses (ITC) Hulls, but these have recently been amended by underwriters without any consultation with the International Group of P&I Clubs and Clause 10.5.2 of ITC Hulls 1.11.95 provides:

> *10.5 no claim under this Clause 10 shall in any case be allowed for or in respect of*
>
> *10.5.2 expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or release of pollutant substances from the vessel, or the threat of such escape or release.*

Thus the Rule XI(d) costs allowed in G.A. are effectively excluded from hull insurance contracted on this basis.

This type of risk of incurring cost to save property is not one which should properly be covered by P&I, so a potential gap in cover has been created. However, additional insurance designed to cover the gap is available from the hull market in the form of a buy-back clause known as "The Institute General Average - Pollution Expenditure Clause Hulls", which provides as follows:

> *In consideration of an additional premium to be agreed, where the contract of affreightment provides for adjustment according to the York-Antwerp Rules 1994 this insurance is extended to cover vessel's proportion of General Average expenditure, reduced in respect of any under insurance, which is allowable under Rule XI(d) of the York-Antwerp*

Rules 1994 and which would be recoverable under Clause 10 of the Institute Time Clauses - Hulls 1.11.95, but for Clause 10.5.2 therein.

This Clause is subject to English law and practice.

It should be noted that this additional cover responds to Rule XI(d) costs only when all of the vessel's contracts of affreightment provide for adjustment under the York-Antwerp Rules 1994, so in order to avoid the gap in cover referred to above, considerable vigilance will have to be exercised, for example, in the preparation of bills of lading and Charterparties.

If a vessel is insured under ITC Hulls 1.11.95 and is trading under a contract or contracts of affreightment which provide for adjustment of General Average under the York-Antwerp Rules 1950 or 1974, the buy-back cover will be ineffective. In such circumstances Members wishing to maintain the same level of cover as was available under previous hull policies should endeavour to have the buy-back clause amended to read:

In consideration of an additional premium to be agreed, this insurance is extended to cover vessel's proportion of General Average expenditure, reduced in respect of any under insurance, which is allowable under Rule XI(d) of the York-Antwerp Rules 1994 and which would be recoverable under Clause 10 of the Institute Time Clauses Hulls 1.11.95, but for Clause 10.5.2 therein.

Members who are obliged to contract hull insurance on terms of ITC Hulls 1.11.95 and who are in any doubt as to its implications for P&I are recommended to contact the Managers. The Managers will also be prepared to advise what other means may be available to bridge the gap in cover, if it cannot be avoided.

LIMIT ON CLUB COVER

We refer to our letter of 18th August 1995 on this subject.

Your Committee considered the compromise proposal at their last quarterly meeting in Athens on 18th October and again at a specially convened meeting in London on 10th November.

By the time of the latter meeting, the Boards/Committees of ten of the thirteen International Group Pooling Clubs had agreed to implement the compromise proposal from the commencement of the 1996/97 Policy Year (albeit, in many cases, with reluctance, concern and qualification), with the result that any dissenting Clubs, whose Boards/Committees continued to reject the compromise proposal, would have been excluded from the new Pooling Agreement and the new Group from that time.

In your Committee's view, exclusion from the International Group and, in particular, from participation in the Pooling Agreement and the Group's Excess Loss Reinsurance Contract, would cause serious harm to the Members of the London Club.

In the circumstances, at its Special Meeting on 10th November, your Committee agreed to implement the compromise proposal with effect from 20th February 1996, subject to the same condition imposed by the Clubs which had already agreed, that a minimum of 75% of Clubs, or ten out of the thirteen, representing 85% of Group tonnage, agree to implement.

However, in common with the Boards of the North of England, the United Kingdom, the Swedish and the Newcastle Clubs, your Committee declined to accept a proposed moratorium on future discussion of the issue and declined to pass a proposed resolution to the effect that it will not reconsider the issue of limitation unless there are significant changes in circumstances, including but not limited to significant changes in the placing of the Group Excess Loss Contract or the regulatory climate, or the actual occurrence of a catastrophe claim. Apart from its abhorrence of any restraint on future discussion, your Committee also received legal advice that it cannot fetter its successors nor pre-determine by agreement the future exercise of their discretion, so that any such Board resolution would be legally ineffective.

Despite having been obliged to agree to implement the compromise proposal in order to avoid exclusion from the International Group, your Committee remain of the view that the compromise proposal is not in the best interests of a majority of shipowners, since the Members' limits of liability for overspill calls are set at such a high level that they do not protect shipowners from the risk of insolvency and, in practical terms, represent no improvement on the present regime of unlimited liability.

Your Committee do not accept as valid the reasons advanced by some Club Managers for opposing the introduction of a specific monetary limit at a level which is reasonably collectable from a majority of Members without exposing them to the risk of bankruptcy.

Your Committee do not accept the reasoning of these Club Managers in considering it right to have a specific financial limit at a collectable level on

cover in respect of oil pollution liabilities - which is clearly in the best interests of shipowners as the "EXXON VALDEZ" case has shown - but wrong to have such a limit on cover for all other liabilities.

Accordingly, your Committee will continue its efforts to promote awareness amongst shipowners and their associations of the implications of the current proposals and will continue to press for the introduction of a limit on Club Cover for all claims at a realistically collectable level in the near future. Your Committee continues to believe that such a development is in the best interests of the vast majority of shipowners and that their legitimate interests should prevail over the interests of others.

New Club Rules in respect of overspill claims will be required in order to implement the compromise proposal and authority to the necessary Rule changes will be sought at a Meeting of the P&I Class of the Club, Class 5, to be held simultaneously with the next quarterly Committee meeting on 24th January 1996.

CANADIAN OIL POLLUTION LEGISLATION
SHIPBOARD EMERGENCY PLANS

We refer to our Circulars of July and October 1995.

The five Response Organisations which have applied for certificates of designation to respond to spills of 10,000 tonnes within their specified geographical areas of response ("GARs") have now received such certification from the Minister of Transport. In particular, Western Canada Marine Response Corporation (WCMRC) was certified on 3rd October; Great Lakes Response Corporation of Canada (GLRCC) was certified on 1st November; Eastern Canada Response Corporation Ltd. (ECRC), Point Tupper Marine Services Ltd. (PTMS), and Atlantic Emergency Response Team Inc. (ALERT) received certification on 9th November.

Consequent upon these certifications, relevant ships (as particularised within our earlier Circulars) must now have entered into Arrangements with the Response Organisation(s) covering the relevant GAR within which Members' ships are to trade, and such ships must have on board a fully completed Declaration as required under the Canada Shipping Act, prior to entering Canadian waters.

As regards approval of the Response Organisations' contracts, the position remains as advised in October, namely that the 31st August 1995 versions of the contracts issued by WCMRC, GLRCC and ECRC have been approved by the International Group, but the contracts of PTMS and ALERT have not been approved. Accordingly, Members whose vessels are expected to enter the GAR of PTMS and ALERT should contact the Managers to establish whether, at the material time, the position regarding approval may have changed and, if not, to obtain advice on how best to proceed.

As regards the levying of the Bulk Oil Cargo Fees (again as particularised within our earlier Circulars), Members should be aware that, in contrast to the other Response Organisations, PTMS will require tanker vessels to pay these fees (currently CAD0.225 per tonne) whether or not the terminal has been "designated".

CANADIAN OIL POLLUTION LEGISLATION SHIPBOARD EMERGENCY PLANS

Our Circular to all Members of July this year made reference to the additional requirements, that is over and above the requirements of MARPOL 73/78 and OPRC 1990 for the carriage on board oil tankers of 150 tons and above and other ships of 400 tons and above of a Shipboard Oil Pollution Emergency Plan (SOPEP), of the amended Canada Shipping Act (CSA), namely, every Canadian ship and every other ship in Canadian waters required to have a SOPEP will also be required:

1. To have entered into a contractual Arrangement with a Response Organisation which has been certified by the Minister of Transport as being capable of responding to a spill of at least the total quantity of oil carried (whether as cargo or as fuel) up to a maximum of 10,000 tonnes.
2. To have a Declaration on board which declares:
   (a) The name, address and telephone number of the ship's pollution insurer;
   (b) The name of the Response Organisation with which the Arrangement has been made;
   (c) The quantity of oil covered by the Arrangement, and the waters in which the ship is operating;
   (d) (i) The name, telephone and fax or telex number of the persons authorised to implement the Arrangement;
   (ii) The name, telephone and fax or telex number of the persons authorised to implement the SOPEP.

Since 31st July, ships entering Canadian waters have been obliged to meet the limited requirement of complying with provisions 2(a) and 2(d)(ii) above. However, full compliance with all these provisions will be required so soon as a ship enters an area within which a Response Organisation has been certified by the Ministry of Transport, and it is now expected that the following five Response Organisations will receive certificates of designation to respond to spills of 10,000 tonnes within their specified geographic areas of response and approval of their proposed fees within October:

Western Canada Marine Response Corporation (WCMRC) has applied to cover the waters bordering the Province of British Columbia.

WCMRC proposes to charge an Initiation Fee of CAD200, an annual Registration Fee of CAD450, and Bulk Oil Cargo Fees (BOCF) of CAD1.52 per tonne (all per ship and all plus taxes).

Great Lakes Response Corporation of Canada (GLRCC) has applied to cover the waters of the Canadian Great Lakes system within the Province of Ontario, including Lake Superior, the St. Mary's River, Lake Huron, the St. Clair River, the Detroit River, Lake Erie, Lake Ontario, the St. Lawrence River from Kingston, Ontario, to the western border of the primary area of response associated with the designated port of Montreal, Lake Winnipeg, Lake Athabasca and the Athabasca River from Fort McMurray to Uranium City.

GLRCC proposes to charge an Initiation Fee of CAD200, an annual Registration Fee of CAD450, and BOCF of CAD1.85 per tonne (all per ship and all plus taxes).

Eastern Canada Response Corporation Ltd (ECRC) has applied to cover the waters of James Bay, Hudson Bay, Ungava Bay, the Province of Quebec, including the St. Lawrence River from the western border of the primary area of response associated with the designated Port of Montreal to the Gulf of St. Lawrence, and the Atlantic Provinces, excluding the primary areas of response associated with the designated ports of Saint John (New Brunswick) and Point Tupper (Nova Scotia).

ECRC proposes to charge an Initiation Fee of CAD200, an annual Registration Fee of CAD450, and BOCF of CAD0.448 per tonne (all per ship and all plus taxes).

Point Tupper Marine Services Ltd (PTMS) has applied to cover the waters within an arc having a 50 nautical mile radius about Bear Head light, 45°33' North, 61°17' West, excluding waters North of the Canso Causeway into St. George's Bay and the waters of Bras d'Or Lakes, St. Andrew's Channel, St. Patrick's Channel, Great Bras d'Or and other waters internal to Cape Breton Island.

PTMS proposes to charge an annual Subscription Fee of CAD450, BOCF of CAD0.225 per tonne, and a Bunker Capacity Fee of CAD100 per ship per entry within PTMS' geographical area of response, except tankers loading or discharging bulk oil as cargo (all per ship and all plus taxes).

Atlantic Emergency Response Team Inc (ALERT) has applied to cover the primary areas of response associated with the designated port of Saint John, New Brunswick.

ALERT proposes to charge an Initiation Fee of CAD200, a Registration Fee of CAD450, and BOCF of CAD0.44 per tonne (all per ship and all plus taxes).

As regards approval of the Response Organisations' contracts, the position remains that the WCMRC, GLRCC and ECRC contracts contain common terms and, after very lengthy negotiations between the International Group's Oil Pollution Sub-Committee and the central management company, Canada Marine Response Management Corporation (CMRMC), the 31st August 1995 version of these contracts has now been approved. As far as PTMS and ALERT are concerned, it is anticipated, but yet to be confirmed, that their contracts will mirror the CMRMC contracts and therefore will also be approved.

A largely interim, but material, difficulty has been identified with respect to the levying of the Bulk Oil Cargo Fees, which arise under the CMRMC contracts when a tanker loads (for an international destination) or discharges at a facility which does not have an Arrangement with a CMRMC Response Organisation. This difficulty concerns tankers loading or discharging at any Oil Handling Facility which has not been designated by the Minister of Transport pursuant to the CSA (because such designation requires the facility to have such an

Arrangement). While it must be anticipated that all major facilities will become designated facilities, such designation will not be effective in the case of any facility until 9th December. In such circumstances, whereas the Response Organisations will after 9th December look to the designated facilities for payment of the BOCF they will, prior to that date, seek payment of the BOCF from the ship. However, we have been advised that the six shareholders of CMRMC will be paying the BOCF on a voluntary basis prior to their designation on 9th December, these shareholders being Ultramar, Petro-Canada, Shell, Imperial Esso, Sunoco and Chevron.

In conclusion, Members whose ships are to trade within Canadian waters covered by WCMRC, GLRCC or ECRC should now enter into contracts with these Response Organisations, provided that the concerned Response Organisation affirms that the version of the contract to be employed has been approved by the International Group of P&I Clubs. Where ships are to trade within Canadian waters covered by PTMS or ALERT, Members should seek advice from the Managers on the acceptability of such contracts.

Once Members have entered into a contractual Arrangement with a Response Organisation they must ensure that their ships have on board a fully completed Declaration as required by the CSA and as particularised above.

Members whose tankers are to trade to Canadian Oil Handling Facilities are advised to establish whether such facilities are designated facilities or, prior to 9th December, participating members of CMRMC Response Organisations in order that any liability to pay Bulk Oil Cargo Fees may be identified and responsibility for such resolved with Charterers.

U.S. OIL POLLUTION REGULATIONS - SHIPBOARD OIL POLLUTION EMERGENCY PLANS

Since 18th August 1993, tankers trading in U.S. waters have been required to have on board a Vessel Response Plan ("VRP") complying with the requirements of OPA 90. With effect from 4th April 1995, the requirements of Regulation 26 of Annex I of MARPOL 73/78 must be complied with by all tankers of 150 gt and above and by all other ships of 400gt and above, namely they must have on board an approved Shipboard Oil Pollution Emergency Plan ("SOPEP"). Tankers complying with the stringent OPA 90 VRP requirements may be expected to sufficiently comply with the Regulation 26 requirements, but we wish all Members to be aware of the more recent MARPOL requirements in light of the United States Coast Guard's ("USCG") stated intention to apply this requirement strictly.

While it is our understanding that the USCG does not intend to board vessels specifically to inspect SOPEPs, nevertheless, in the event of a boarding, vessels will be required to produce such. Failure to produce an approved SOPEP will render the concerned vessel liable to a maximum civil penalty of US$25,000 per day and to the possibility of the vessel being detained, denied entry or prohibited from carrying out cargo transfer or other vessel activities.

SOPEPs are required to be approved by a vessel's flag state, while in the case of vessels registered in states which are not signatories to MARPOL the vessel's SOPEP must be approved by a state that is a signatory or by a recognised Classification Society. The issuance, or renewal, of International Oil Pollution Prevention (IOPP) Certificates will be conditional upon the existence of an approved SOPEP. Members requiring further information concerning SOPEPs should refer to the IMO publication "Guidelines for the Development of Shipboard Oil Pollution Emergency Plans".

LIMIT ON CLUB COVER

As Members will know, shipowners' P&I cover is unlimited for all claims, apart from oil pollution liabilities for which cover is limited to $500m. This means that, if a marine catastrophe ever occurred to produce non-pollution liabilities exceeding the limit of the International Group's reinsurances, currently $1.53bn, the Clubs would have to make an overspill or catastrophe call on Members for the excess. Since, under the mutual system, Members are the underwriters as well the insured, their liability for catastrophe calls is also unlimited. Moreover, since their liability is joint and several, contributions due from Members who fail to pay have to be collected from the remaining Members.

Whilst the largest sum of non-pollution liabilities ever produced by a single casualty, $115m, is less than 10% of the current Group reinsurance limit, nevertheless developments in the USA over the last decade have given rise to speculation that a marine catastrophe not involving the spillage or ignition of oil could produce liabilities exceeding $1.53bn. Types of catastrophe which have been considered include the following:

(a) Delayed ignition of escaped LNG/LPG in an urban or industrial area causing substantial loss of life and property damage.
(b) A large spillage of particularly noxious chemicals in an industrial or residential area requiring extensive recovery and clean-up and evacuation for an extended period, as well as compensation.
(c) Collision with an oil rig or production platform. The "PIPER ALPHA" disaster could have been caused by a ship.
(d) An explosion in a port area, such as that which devastated Texas City in 1947; ammonium nitrate was being loaded on the "GRANDCAMP" and the damages were worth about $200m; today's equivalent would be several billion dollars.
(e) Undetected chemical contamination of a foodstuffs cargo, causing widespread illness and death.

Speculation of such a catastrophe producing claims exceeding $1.53bn is focussed on the USA where the Limitation Conventions have not been adopted and the Courts are generally hostile to the concept of shipowners' limitation. Negligence on the part of an executive officer, manager or superintendent of the shipowner in some aspect of shipboard systems or procedures can be sufficient for the U.S. Courts to deny the shipowner the right to limit. The "EXXON VALDEZ" oil spill in Alaska in 1989 has produced claims against Exxon totalling $15bn, and it is certainly possible to envisage a non-oil casualty producing claims exceeding one-tenth of this figure in the USA.

The debate as to whether the International Group of P&I Clubs should introduce a specific financial limit on Club cover for all claims has been referred to Club Committees/Boards on a number of occasions over the last few years. Your Committee first decided that it was in favour of such a limit in

1986. The Board of the UK Club, the largest Club, reached the same decision in 1992 and their Managers then advised the Group that their Board had in mind a figure of $2bn as an overall limit on Club cover, which they considered to be a high figure. (At that time the limit on the Group excess loss reinsurance contract was $1.065bn). Your Committee agreed to this proposal in January 1993. At a Group meeting in July 1993, the Clubs were equally divided on the issue.

Clubs in favour of a limit considered that shipowners and their Clubs should be protected against the risk of bankruptcy in the case of a non-oil catastrophe producing a substantial overspill or catastrophe call on the Members. The Group's present annual premium income is $1.7bn, so that a catastrophe claim reaching $3bn would require the Clubs to make a catastrophe call on Members almost equivalent to 100% of advance and supplementary calls for one policy year. It appears doubtful that a call substantially above this level could be collected from Members without some default and erosion of mutuality as a result of the remaining Members having to make up the shortfall. Moreover, unlimited cover is clearly illusory if payment of claims is ultimately dependent upon the resources of the Group membership to contribute to a catastrophe claim, which are finite.

Clubs in favour of maintaining unlimited cover have argued that a specific financial limit "would offer a target to claimants". It appears that they have in mind the climate of litigation in the USA where juries in civil cases are encouraged to give multi-million dollar damage awards against "deep pocket" defendants in environmental damage cases. However, the limit of $500m on Club cover of oil pollution liabilities, which seems a more likely target, does not appear to have become a target for claimants in the U.S. - or indeed to have dulled their appetites, for example the "EXXON VALDEZ" case. They have also argued that a specific financial limit would result in loss of reinsurance capacity to excess covers and to direct competition, and would create regulatory and legal difficulties by depriving P&I cover of its unique identity. These concerns appear highly speculative. It is difficult to envisage substantial demand for reinsurance of excess layers or, in the short term, direct competition from the commercial market. The regulatory and legal difficulties created by introducing a limit at a level of, say, $2bn are not immediately apparent.

In order to try to reconcile the views of the Clubs for and against a specific financial limit on Club cover a Working Group of Club Managers came up with a novel idea. In their report in October 1994 they proposed that a limit should be fixed for individual Members' exposure to catastrophe calls by reference to their entered ships' limits of liability for claims other than loss of life and personal injury that is property damage claims, under the 1976 Limitation Convention; and that each Club's liability to contribute to catastrophe claims should be limited to the aggregate of its Members' ship limits. It is estimated that the total of the ships' or Members' limits for the entire International Group tonnage of 400m grt is about $100bn. Club Managers were asked to

put the Working Group's report to their Boards for their approval to this scheme in principle as a method of introducing a limit on catastrophe calls, subject to further discussion as to the percentage of ships' Convention limits to be taken as the Member limits. Your Committee gave tentative approval to this scheme in principle in October 1994, subject to a very low percentage of the ships' Convention limits being adopted. They had in mind a figure of between 2 or 3% producing total Members' limits for the Group of about $2bn or $3bn.

In April 1995 the Working Group produced a written paper for consideration by all Club Boards with "compromise" proposals for settlement of the differences between the Clubs over the issue of a limit on Club cover. These proposals were:

(1) Member limits for catastrophe calls should be 20% of their entered ships' limits of liability for property damage under the 1976 Limitation Convention. This formula produces total Member limits for the Group of roughly $20bn - 12 times the Group's total annual premium of $1.7bn.

    Attached as an Appendix are illustrations of the proposed Member limits for various tonnage sizes.

(2) Clubs' exposure to claims by Members or by other Clubs under the Pooling Agreement should be limited by reference to the maximum amount that each Club can recover from its Members by way of catastrophe calls after taking all reasonable steps to do so. Thus each Club's limit in the collection of catastrophe calls would be the aggregate of its Member limits less amounts not economically recoverable from its Members and any costs incurred in collecting catastrophe calls. Disputes between Clubs as to their contributions would be referred to a special arbitration panel appointed under the Pooling Agreement.

(3) These rules should stand unamended for a minimum period of five years and, if any amendments are proposed after the five year period, a minimum of two years from the end of the year in which such amendments are proposed should elapse before any further amendments are adopted.

At its meeting on 26th April 1995, your Committee unanimously rejected these proposals on the following grounds:

(1) It did not consider that the proposed Member limits - 20% of ships' limits of liability for property damage under the 1976 Convention - were realistically collectible from a majority of shipowners. Therefore it did not consider that they would protect shipowners from the risk of bankruptcy in case of a catastrophe claim.

(2) The arrangement that Clubs could deduct from their contributions to catastrophe claims amounts not economically recoverable from their Members was a recipe for chaos and confusion. In an extreme case it could result in a Club having to arrest its Members' ships in

order to enforce a catastrophe call and establish what amounts were economically recoverable.

(3) The seven year moratorium was considered wholly unreasonable and an unacceptable "gag" on further discussion on this important subject.

Despite the London Club's stated opposition, the other Club Boards/ Committees have now approved the "compromise" proposals except for the Swedish Club which will not make a decision until October. The Greek Shipping Cooperation Committee in London, the Union of Greek Shipowners and the Swedish Shipowners' Association have all expressed their opposition to the proposals - particularly the proposed Member limits on the grounds that they are not realistically collectible - and have asked other Clubs to support the stand taken by the London Club. Other individual shipowners have stated their disagreement with the proposals. The rest of the International Group Managers have decided to press ahead with their plans to implement the "compromise" proposals for the next P&I policy year commencing 20th February 1996 and the Working Group have been instructed to draft new Club rules for approval at the Clubs' annual general meetings in October. The proposed rules are not likely to be circulated until September.

Apart from the Swedish Club, other Clubs in favour of the introduction of a specific financial limit on Club cover have expressed the view that the proposed limit is set at a much higher level than is realistic but their Boards have agreed, in many cases reluctantly, to support the compromise proposals for the sake of Group unity. Some Clubs consider that the proposals represent a step forward in that they establish the principle of a limit. However your Committee and, indeed, another Club consider this a weak argument, as a limit at the enormously high figure of $20bn is wholly artificial.

In summary your Committee is in favour of a specific financial limit on Club cover in the range of $2-3bn. However, it is prepared to support the introduction of an indirect limit by way of Member limits on catastrophe calls, provided the Member limits are set at a level which is realistically collectible from shipowners, and your Committee consider that this figure should be 2% or 3% of ships' Convention limits for property damage.

Your Committee also consider that these "compromise" proposals should be circulated and fully explained to Members and to shipowners' associations and that sufficient time be allowed for them to consider and comment on the proposals, and to participate in a full debate, before any attempt is made to implement them. There appears to be no good reason for urgency in implementing the proposals for the next policy year. Your Committee further believe that, with the exception of a few large shipping companies with passenger and cruise ships, the vast majority of shipowners will be opposed to these "compromise" proposals once they are fully explained to them.

If, notwithstanding our opposition, the remainder of Group Managers decide to press ahead in implementing these proposals in February 1996, your

Committee will have to decide at its next meeting on 18th October whether they are so contrary to the interests of the Members that the Association should not implement them. This may result in the rest of the Group forming new reinsurance arrangements without the London Club. The London Club would then have to arrange its own reinsurance programme.

Prior to October, when a majority of the Group Clubs hold their annual general meetings and will further consider the "compromise" proposals, your Committee and Managers will continue their efforts to persuade other Club Boards/Committees and their Managers and shipowners' associations in Europe, America and the Far East that the proposals are not in the best interests of shipowners and should be rejected. We will keep you advised of developments.

We shall be grateful for any views or comments which Members may have on this important subject.

APPENDIX

Set out below are 20% of ships' limits of liability for property damage under the 1976 Limitation Conventions for various tonnage sizes in US$ at the current rate of exchange of $1.5177 to the SDR (15.8.95).

Gross Tons	SDR	US$
500	33,400	50,692
1,000	50,100	76,036
2,000	83,500	126,728
3,000	116,900	177,419
4,000	150,300	228,110
5,000	183,700	278,802
6,000	217,100	329,492
7,500	267,200	405,530
10,000	350,700	532,258
12,500	434,200	658,985
15,000	517,700	785,713
17,500	601,200	912,441
20,000	684,700	1,039,169
22,500	768,200	1,165,897
25,000	851,700	1,292,625
30,000	1,018,700	1,546,081
35,000	1,143,700	1,735,793
40,000	1,268,700	1,925,506
45,000	1,393,700	2,115,219
50,000	1,518,700	2,304,931
55,000	1,643,700	2,494,643
60,000	1,768,700	2,684,356
65,000	1,893,700	2,874,069
70,000	2,018,700	3,063,781
75,000	2,101,700	3,189,750
80,000	2,184,700	3,315,719
85,000	2,267,700	3,441,688
90,000	2,350,700	3,567,658
95,000	2,433,700	3,693,626
100,000	2,516,700	3,819,596
110,000	2,682,700	4,071,534
120,000	2,848,700	4,323,472
130,000	3,014,700	4,575,411
140,000	3,180,700	4,827,349
150,000	3,346,700	5,079,287
160,000	3,512,700	5,331,224
170,000	3,678,700	5,583,163

CANADIAN OIL POLLUTION LEGISLATION - SHIPBOARD EMERGENCY PLANS

In common with other States who are signatories to the MARPOL 73/78 Convention and Protocol (International Convention for the Prevention of Pollution from Ships, 1973, and the Protocol of 1978 relating thereto), in particular Regulation 26 of Annex I, and the OPRC 1990 Convention (International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990), with effect from 4th April 1995 Canada requires every oil tanker of 150 tons gross tonnage and above and every ship other than an oil tanker of 400 tons gross tonnage and above to carry on board a shipboard oil pollution emergency plan ("SOPEP") approved by the (flag) administration.
Regulation 26 having been included within MARPOL 73/78 in consequence of the requirement under Article 3(1)(a) of the OPRC Convention that certain ships have on board a SOPEP, the Plans required under the two Conventions are the same. The absence of an approved SOPEP renders a vessel ineligible to receive her IOPP Certificate pursuant to the MARPOL 73/78 Convention.

The mandatory provisions of Regulation 26 provide that the SOPEP shall consist at least of:

(a) The procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident.
(b) The list of authorities or persons to be contacted in the event of an oil pollution incident.
(c) A detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following the incident.
(d) The procedures and point of contact on the ship for co-ordinating shipboard activities with national and local authorities in combating the pollution.

In addition, under amendments to the Canada Shipping Act (CSA), and in particular under Canada's enabling amended Oil Pollution Prevention Regulations, every Canadian ship and every other ship in Canadian waters required to have a SOPEP will also be required:

1. To have entered into a contractual Arrangement with a Response Organisation which has been certified by the Minister of Transport as being capable of responding to a spill of at least the total quantity of oil carried (whether as cargo or as fuel) up to a maximum of 10,000 tonnes.
2. To have a Declaration on board which declares:
    (a) the name, address and telephone number of the ship's pollution insurer;
    (b) the name of the Response Organisation with which the Arrangement has been made;
    (c) the quantity of oil covered by the Arrangement, and the waters in which the ship is operating;
    (d) (i) the name, telephone and fax or telex number of the persons authorised to implement the Arrangement;

(ii) the name, telephone and fax or telex number of the persons authorised to implement the SOPEP.

Regulation 26 provides that the person authorised to implement the SOPEP shall be the Master or other person having charge of the ship. However, the person(s) authorised to implement the Arrangement are not required by the CSA to be on board the ship or based in Canada, but are required to be available on a 24 hour basis. Unlike the situation in the United States, there is not as yet to be found in Canada a similar service industry to that of the Qualified Individual ("QI") and hence Members will need to select "Authorised Persons" from the Master/Officers aboard the ship, an Operational Officer within the Company, or a Canada-based party. Given the Master's probable responsibility for implementing the SOPEP, the Ship's ability (in all but catastrophic circumstances) to be in 24 hour contact with the owning company's shoreside responsible officers, and the considerable importance of avoiding delay in response action, it may be seen that the Master is the most appropriate person to be appointed the Authorised Person for the purpose of implementing the Arrangement, should implementation of the Arrangement be considered appropriate. In this regard, Canadian law requires concerned ships to have Arrangements in place; it does not require the ship to implement the Arrangement. It is open to the ship to decide that a different contractor may be more suitable than the certified Response Organisation in the particular circumstances of a spill. However, and most importantly where a serious spill is concerned, the ship will be exposed to a substantial fine if the Court should adjudge that the remedial action taken was inadequate and such judgment might well be reached if a Canadian Government certified Response Organisation named in the Ship's Arrangement was not called in.

The new regime also envisages the ship's appointment of an On-Scene Commander after the fact of at least a more serious spill, rather in the same way that a Response or Spill Manager is required by U.S. legislation. However, given that the Canadian Coast Guard (CCG) and the Response Organisations have stated that they will not undertake this function, and given once again that there would not appear to be any presently identifiable Canadian service industry from which to draw such On-Scene Commander, Members may again appear to be obliged to bring in such expertise from outside Canada. However, in cases where Certified Response Organisations have been brought in, they, under the terms of the standard contract, will, within the first 24 hours of a spill, draw up a proposed response plan for the ship's consideration and decision, thereby providing the ship with an important response lead.

The IMO Guidelines on SOPEPs recognise the fact that while some coastal States have agencies that take charge of response immediately and subsequently bill the ship for the cost (as indeed was the position in Canada prior to these amendments to the CSA) others place responsibility for initiating the response on the ship, and that in this latter case the SOPEP may require guidance to assist the Master. Provided that the SOPEP emphasises the

discretion of the Master to implement the Arrangement rather than making such step a requirement of the SOPEP (since failure to fully implement the SOPEP may give rise to a fine of up to CAD250,000 under the CSA), it may appear appropriate that the SOPEP does contain the necessary information regarding the existence and possible implementation of the Arrangement when in Canadian waters.

Response Organisations

It is anticipated that there will be three Response Organisations certified to respond to a 10,000 tonne spill and that these will operate under the central management of the Canada Marine Response Management Corporation (CMRMC). The three geographically-oriented Organisations are West Canada Marine Response Corporation (WCMRC), a division of Vancouver-based Burrard Clean Operations Limited, which will operate on the West Coast including the Strait of Juan de Fuca, while the East Coast is to be served by the Great Lakes Response Corporation (GLRC) and the Eastern Canada Response Corporation (ECRC). Two other Response Organisations are the Point Tupper Response Organisation at Port Hawkesbury (Nova Scotia) and the St. John (New Brunswick) Response Organisation, which organisations have exclusive response jurisdictions within their respective port limits and within a 50 mile radius therefrom. Accordingly, depending upon a vessel's transit she may have to enter into an Arrangement with both the exclusive organisation and ECRC. Further, since these smaller organisations are not expected to receive certification to respond to more than a 2,500 tonne spill they will enter into co-operation agreements with ECRC to cover large spills.

CMRMC has advised the Pollution Sub-Committee of the International Group of P&I Clubs that the contracts for WCRMC, GLRC and ECRC will contain common terms and hence it will be possible to agree the terms for all three contracts simultaneously. However, at this time the terms, and in particular the provisions regarding indemnities and funding, have yet to be approved by the International Group. Members will be notified so soon as the contracts have been approved.

The format of the contracts is that two types of agreement will be issued, namely a Ship (Bulk Oil) Membership Agreement and a Ship (Non-Bulk Oil) Membership Agreement. There will also be a Membership Agreement for designated oil handling facilities. The fee structure for ships is expected to involve, for each of the CMRMC Organisations, a one-off start-up fee of CAD200 per ship in the first year, and an annual administration fee of CAD450. In the case of ships unloading or loading oil for international destinations, while it had been anticipated that a cargo fee of CAD0.5 per metric tonne would be payable by the ship during a 90 day period between the initial certification of the Response Organisations and the formal designation of the oil handling facilities by the Minister of Transport, CMRMC has advised that a substantial percentage of the facilities throughout Canada have already entered into Arrangements with CMRMC and, furthermore, that such facilities have agreed to pay the bulk oil cargo fees from day one.

The Canadian Coast Guard

The primary objective of the new oil pollution regime created by the amendments to the CSA is that the polluter should not only pay for clean-up and pollution mitigation measures but also be responsible for their implementation and it is the intention of the CCG merely to monitor such operations. However, should a ship fail or fail timeously to implement her SOPEP and/or should the ship's On-Scene Commander not be timeously identified and/or should it appear to the CCG that the ship is unable (as might well be the case if a catastrophic casualty occurred) or unwilling to manage the spill response, the CCG will assume operational control. Indeed, in the case of a serious spill it may be unrealistic to suppose that the CCG would not assume control, or at least joint control, in any event. The CSA also empowers the Minister of Transport to designate Pollution Prevention Officers who in turn have very wide powers of inspection and direction under the CSA with respect to potential or actual pollution.

It may be noted here that the CCG does remain fully responsible for the response to Arctic pollution incidents, that is North of 60EN.

Offences and Penalties

Under Section 664 of the CSA, a ship guilty of discharging a pollutant is liable, on summary conviction, to a fine not exceeding CAD250,000 and, on indictment, to a fine not exceeding CAD1,000,000. It is a matter entirely within the discretion of the Government prosecutor as to whether the proceedings are summary or on indictment. The Court may, in addition, direct the offender to pay an amount for the purposes of conducting research into the ecological use and disposal of the concerned pollutant.

In assessing the level of the fine to be imposed, the Court will take into account, inter alia, the remedial action taken, or proposed to be taken, by the offender to mitigate the harm; whether the pollutant that was discharged was reported on a timely basis; the incompetence, negligence or lack of concern of the offender; any precautions taken by the offender to avoid the offence; any evidence from which the Court may reasonably conclude that the offender has a history of non-compliance with legislation designed to prevent or minimise pollution.

The significance of a ship's development of and full compliance with her SOPEP, and the timeous implementation of her Arrangement or other equally effective response measures, to the fine imposable under Section 664 will be plain.

Under Section 665 of the CSA (and once the enabling Regulations come into force as presently expected in August), any specified ship that enters Canadian waters without an Arrangement with a certified Response Organisation, or which does not have on board the required Declaration, or which does not take reasonable measures to implement her SOPEP, is guilty of an offence and liable on summary conviction to a fine not exceeding CAD250,000.

Under Section 666 of the CSA, a ship that fails to comply with a direction of a Pollution Prevention Officer is guilty of an offence and liable on summary conviction to a fine not exceeding CAD200,000.

Under Section 667 of the CSA, a ship that fails to report the discharge of a pollutant in the prescribed manner is guilty of an offence and liable on summary conviction to a fine not exceeding CAD200,000.

Certification and Compensation

Under Section 684 of the CSA, 1969 Civil Liability Convention ships carrying in bulk as cargo more than 2,040 tonnes of crude oil, fuel oil, heavy diesel oil, lubricating oil, whale oil or any other persistent oil are required to have on board a Certificate of Financial Responsibility.

Under the CLC Convention as enacted in Canada under the CSA, the owner of a ship, whether it be a Convention ship or a non-Convention ship, that causes pollution in Canadian waters is strictly liable for oil pollution damage and for the reasonable costs and expenses of the Minister of Transport, a certified Response Organisation, and any other person in Canada in respect of measures taken to prevent, repair, remedy or minimise oil pollution damage, subject to the Convention defences, and the entitlement to limit liability, in the absence of the actual fault or privity of the owner.

Members will be notified as and when a date is proclaimed for the coming into force of this new Canadian pollution regime. However, the most recent CCG "Issues Update" of 19th June indicates the possibility of a two-stage implementation, the first stage requiring ships as of 31st July to have on board a Declaration declaring the name, address and telephone number of the ship's pollution insurer and the name, telephone and fax or telex number of the persons authorised to implement the SOPEP; the second stage requiring ships to comply with the Arrangement provisions once the Response Organisations have been certified but which may not take place until September at the earliest.

THE IMO INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE

The International Safety Management (ISM) Code is the abbreviated title for the International Management Code for the Safe Operation of Ships and for Pollution Prevention, which was adopted by the Assembly of IMO in November 1993 and incorporated into the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) as Chapter 9 in June 1994. Chapter 9 urges Governments to implement the ISM Code and to make it mandatory for tankers, gas/bulk carriers and passenger ships by 1st July 1998 and for all other ships over 500 gt by 1st July 2002.

The purpose of the Code is to provide an international standard for the safe management and operation of ships and for pollution prevention. It is based on general principles and objectives and is expressed in broad terms so that it can have a widespread application. Its objectives are to ensure safety at sea, prevention of human injury or loss of life and avoidance of damage to the environment.

It provides that every Company, meaning the owner or any other organisation which has assumed responsibility for the operation of the ship, should develop, implement and maintain a safety management system (SMS) which includes:

1. A safety and environmental protection policy;
2. Instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag state legislation;
3. Defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
4. Procedures for reporting accidents and breaches of the Code;
5. Procedures to prepare for and respond to emergency situations; and
6. Procedures for internal audits and management reviews.

The Code also provides that a Document of Compliance (DOC) relevant to each ship should be issued for every Company complying with the requirements of the Code, following a successful assessment of the shoreside aspects of the SMS, by the flag state administration - or organisation acting on its behalf (such as a Classification Society) - and placed on board the ship; and also that the flag administration should issue a Safety Management Certificate (SMC) for each ship, after an on board assessment of the SMS, having verified that the Company and its shipboard management operate in accordance with the approved SMS, and should periodically verify the proper functioning of the ship's SMS.

Exact requirements for certification may vary in accordance with each flag state administration's precise interpretation of the Code, and Members may wish to ascertain the precise requirements and time scale set by their own flag administration. Denmark has indicated that it requires compliance with the Code for passenger ships in 1995 and Norway and the United Kingdom have decided to make implementation mandatory for passenger ships by 1st

July 1996. Furthermore the European Commission intends to bring forward a European legislative instrument requiring implementation of the ISM Code for roll-on/roll-off passenger vessels using EU ports on a regular basis regardless of flag by 1st July 1996.

Guidance for administrations in implementing the ISM Code is currently being prepared by an international correspondence group set up by IMO and co-ordinated by Norway. These guidelines will be submitted to the IMO Maritime Safety Committee for approval in May 1995.

The International Chamber of Shipping, based in London has produced a helpful booklet: Guidelines on the application of the IMO International Safety Management Code and, to assist in considering whether and to what extent their own internal procedures may need modification, the Association is sending one copy to each Member.

The Managers fully support moves to implement the ISM Code and would suggest that Members keep them advised of their progress towards obtaining certification.

U.S. OIL POLLUTION - CERTIFICATION UNDER OPA 90

The U.S. Coast Guard (USCG) is now enforcing the COFR regulations that came into effect on 28th December 1994.

All tank vessels in or entering U.S. waters must now carry on board a valid COFR issued by the USCG - or be able to show that a proper application has been sent to the USCG. This information should be on the central USCG computer and be accessible by USCG offices at individual ports.

Evidence of Financial Responsibility can be obtained from either Shoreline or First Line from the following addresses:

SHORELINE - Bermuda	Steve Hannon	Tel: +(809) 296-2324 Fax: +(809) 296-2327
or		
Willis Faber & Dumas - London		
	Nick Taylor	Tel: +(171) 860-9703
Sedgwick Marine & Cargo	Stephen Barton	Tel: +(171) 377-3831
FIRST LINE - Bermuda		
Johnson & Higgins Intermediaries		
	Sheila Nicoll	Tel: +(809) 292-1552

ENFORCEMENT

The USCG has issued instructions as regards enforcement of the COFR regulations. Brief details are set out on the attached sheet as received from Attorneys Kleberg & Head, the Association's correspondents in Corpus Christi, Texas.

Members are advised not to order tank vessels to U.S. ports unless properly documented to comply with the COFR regulations.

EIGHTH DISTRICT CERTIFICATE OF FINANCIAL RESPONSIBILITY (COFR) ENFORCEMENT POLICY

(1) The following is the Eighth Coast Guard District's enforcement policy regarding Certificates of Financial Responsibility (COFR's). It is intended for general distribution to the public and industry.

(2) At 12.00 a.m. on Wednesday, December 28, 1994, Phase I of the new regulations for Certificates of Financial Responsibility (COFR) goes into effect (Chapter 33, Part 138, of the Code of Federal Regulations). This phase requires the following self-propelled tank vessels to follow new COFR regulations: (a) U.S.-flagged; (b) foreign-flagged operating within the inland waters and territorial sea (3-mile limit); and (c) foreign-flagged lightering within the Exclusive Economic Zone (200-mile limit).

(3) When these regulations become effective, the Coast Guard Captain of the Port (COTP) will take the following actions against a vessel that is not following the new COFR regulations:

(a) When on the inland waters or the territorial sea (3-mile limit), suspend or prohibit the vessel's cargo transfer operations.

(b) Prohibit the vessel from entering the territorial sea, if it has not yet entered those waters.

(c) When in port, detain the vessel. The COTP may later require that the vessel leave port under the conditions outlined in paragraph (5).

(d) Prohibit any vessel from offloading oil if, after the regulation becomes effective, it receives cargo from a delivering vessel that does not have the new COFR.

(e) Process a civil penalty violation against a vessel found violating these rules ($10,000/day for first violation and $25,000/day thereafter).

(4) Notification to the COTP of a vessel's COFR status prior to arrival in U.S. waters will allow a check that the COFR is correct and may prevent needless delay of a vessel's entry or transfer of cargo. Agents <u>are requested</u> to consider providing this information to the cognizant COTP for vessels bound for the U.S. as soon as possible, but no later than on the 24-hour notice of arrival.

(5) If a vessel in port cannot obtain a new COFR, the COTP may require the vessel to depart under specific conditions, such as fair weather and tug escort, and may apply whatever other reasonable safety precautions that are necessary to prevent a pollution incident.

U.S. OIL POLLUTION - CERTIFICATION UNDER OPA 90

This Circular updates information contained in Circular 5:196 dated 2nd December 1994.

OPAClub

The brokers promoting OPAClub, Willis Corroon and Sedgwick Marine & Cargo, have been assessing the shipping industry's response to OPAClub and have made various changes to the Letter of Credit requirements and rating structure, as shown on the attached Appendix I, which has just been received from them.

APPENDIX I

OPACLUB RATING STRUCTURE PER G.T.

VESSEL	VOYAGE PREMIUM FOR FIRST TWO VOYAGES	VOYAGE PREMIUM FOR SUBSEQUENT VOYAGES PER VOYAGE	MAX. NUMBER OF VOYAGES ON WHICH PREMIUM PAYABLE	
DIRTY TANKERS				
AGE				
}		}	<50,000 G.T	10
0-10 }	$0.65	$0.15 }	50,000-100,000G.T.	8
}		}	>100,000 G.T.	6
}		}	<50,000 G.T	10
11-20 }	$0.68	$0.165 }	50,000-100,000G.T.	8
}		}	>100,000 G.T.	6
}		}	<50,000 G.T	10
OVER 20 }	$0.70	$0.175 }	50,000-100,000G.T.	8
}		}	>100,000 G.T.	6
CLEAN TANKERS				
		}	<50,000 G.T	10
	$0.35	$0.10 }	50,000-100,000G.T.	8
		}	>100,000 G.T.	6
NON-TANKERS				
	$0.122	$0.061	10	

*Minimum Premium — Premium for first two voyages

*Letter of Credit Requirements — $20xGT for Tankers, subject to $3.5m min - $20m max.
$6xGT for Non-Tankers, subject to $1.5m min - $12m max.

*No maximum premium per fleet

U.S. OIL POLLUTION - CERTIFICATION UNDER OPA 90

This Circular updates information contained in Circular 5:194 dated 24th November 1994.

First Line

In order to dispel fears expressed by Club Managers that the First Line plan, approved by the U.S. Coast Guard on 23rd November for the issue of financial responsibility guaranties up to $150,000,000, might expose Clubs to the risk of being sued in the United States as "de facto" guarantors if Stockton Reinsurance Limited should ever fail to meet its obligations as a guarantor, the Director of the USCG National Pollution Funds Centre has issued letters to Stockton Reinsurance and to individual Clubs, including this Club, confirming that the Coast Guard's acceptance of Stockton Reinsurance as a provider of evidence of financial responsibility and their approval of Stockton Reinsurance as a guarantor under OPA 90/CERCLA was "in no way dependent on or conditioned by the provision by a P&I Club of any evidence of the insurance given to its Members" and that "Stockton Re serves as a guarantor in its own right and is backed by its Reinsurance program". The Coast Guard letter also states: "Upon submission and our acceptance of reinsurance covering an additional $150,000,000 Stockton Re will be authorised to issue guaranties up to $300,000,000."

Following the issue of the letters, the Clubs have received legal advice from the United States that the risk of any individual Club ultimately being declared to be an OPA 90 guarantor under the First Line Program, was very low.

At the same time the International Group Pollution Sub-Committee proposed wordings for the undertaking in favour of the guarantor, Stockton Reinsurance, confirmation of entry/renewal and letter to the Member, required from Clubs under the First Line Program; and these wordings have now been accepted by Stockton Reinsurance and its Reinsurers.

In the circumstances, this Club is able to provide the Club undertakings and confirmations required from Clubs under the First Line Program and Members are now free to avail themselves of the First Line Program if they so wish.

The present limit placed on acceptance of Stockton Reinsurance guaranties by the Coast Guard, $150,000,000, is not of course sufficient to cover the required OPA limits for a VLCC.

OPAClub

The brokers promoting OPAClub are revising the Master Bond Program Agreement to include the Difference in Defences Insurance as an integral part. The premium for this insurance is included in the pricing structure already announced. Owners will be asked to request from their Clubs a letter confirming that participation in the Master Bond Program does not constitute double insurance and that payment by the Sureties under the Master Bond Program will be deemed to be payment by an agent of the Member for the purposes of the applicable Club Rules relating to reimbursement. The

brokers advise that the wording of the Difference in Defences Insurance is in the final stages of approval. They have requested a meeting with Club Managers to discuss the wording.

Shoreline

Shoreline have just advised that they have finally obtained the approval of the U.S. Coast Guard to their programme and that the Coast Guard no longer require the $300,000,000 bond issue as a pre-condition to approval. They advise that the intention is to cover the immediate financial requirement of Shoreline through insurance mechanisms, with the bond issue to follow in the weeks after approval. They further advise that the Coast Guard still has to see the full reinsurance contract but that "the full signed agreement should be delivered in a matter of days and Shoreline is preparing to make COFR applications on behalf of Members as soon as Calls are paid." They also advise that they will issue a new and lower tariff structure shortly.

The Managers will advise Members shortly of the position regarding the documentation required by Shoreline from the Clubs.

Federal Insurance Company (of the Chubb Group of Insurance Companies)

The U.S. Coast Guard issued a press release on 23rd November advising that it had accepted this company as a COFR guarantor. It continues: "this insurance facility was developed by Coastal States Insurance Inc. of Panama City Beach, Florida, ... to provide financial responsibility guaranties for chemical tankers, clean product tankers, parcel tankers, gas carriers and vegetable oil tankers exclusively". The brokers, Coastal States, have not yet advised what documentation, if any, they require from the Clubs in order to support applications to the scheme.

U.S. OIL POLLUTION - CERTIFICATION UNDER OPA 90

This Circular updates information contained in Circular 5:193 dated 21st November 1994.

OPAClub

The brokers promoting OPAClub have issued a circular (attached as Annex A) giving details of the size of the Master Bond and vessel, for which a COFR could be obtained, were all Owners who have formally applied to or expressed interest in OPAClub to undertake to provide Letters of Credit. OPAClub is approved by the U.S. Coast Guard - National Pollution Fund Centre.

There are changes to the rating structure attached to Circular 5:193 for clean tankers and dry cargo vessels.

First Line

We understand that late on 23rd November, just before the Thanksgiving holiday, the National Pollution Fund Centre approved the issue of a guaranty by the Bermudian Stockton Reinsurance Ltd. to the U.S. Coast Guard, and their associated reinsurance programme. The terms of any agreements or other documents that Members may be asked by Stockton Reinsurance to obtain from the Association are as yet unclear, so the Association is not yet able to confirm to Members that such documents can be provided. Further details will presumably become available next week.

Shoreline

Shoreline has now been approved by the Bermudian Authorities and the Shoreline programme has been submitted to the U.S. Coast Guard.

ANNEX A

OPAClub

As of close of business today, November 22, 1994, Willis Corroon and Sedgwick Marine & Cargo have received applications and interest from vessel owners representing tonnage of approximately 17,000,000 gross tons. At this point, interest dictates we must now ask for details of Letters of Credit to support the Master Bond. The gross ton interest equates to a bond amount of $250,000,000. This amount will allow for all vessels up to 166,600 gross tons to be covered. Additional support above the aforementioned amount will increase the size of the bond to allow for guarantees for larger vessels.

Sureties can only formally accept Letters of Credit from those applicants whose application is complete and accepted. Those applicants whose documentation has been received and found initially to be in order have been notified.

For those Owners who have expressed interest but have not yet submitted a complete Application to participate in the OPAClub Master Bond Program, they should immediately submit their Application Forms accompanied by an undertaking to provide a Letter of Credit and the following details:

Name, address and contact name at the bank which will issue your Letter of Credit.
To whom and at what address should the formal OPAClub documents be forwarded for execution.

Applicants should note that the selected bank should hold an A2 or better rating under Moody's and have a U.S. presence upon which the Letter of Credit must be drawn.

Advice to OPAClub of this information is not construed as a binding commitment on the part of an Owner to the OPAClub programme nor is it considered an offer of surety by the Surety Panel.

Applications always remain subject to acceptance and the attention of all Owners is drawn to the warnings with regard to the incidence of expenses in the OPAClub program.

The price structure remains as previously advised.

The promoters request that any submissions be sent in the first instance by facsimile to an OPAClub Centre for fast processing so that we can be ready at the earliest opportunity to issue the Master Bond.

OPACLUB RATING STRUCTURE PER G.T.

	OPAClub Programme Fee	Voyage Premium for first two Voyages per Voyage	Voyage Premium for Subsequent Voyages per Voyage	Maximum Number of Voyages on which Premium Payable
DIRTY TANKERS				
AGE				
0-10	$0.80	$0.20	$0.10	10 (0-50,000gt) 8 (50-100,000gt) 6 (over 100,000gt)
11-20	$0.80	$0.215	$0.115	As above
Over 20	$0.80	$0.225	$0.125	As above
CLEAN TANKERS	$0.80	$0.155	$0.055	10
NON TANKERS	$0.48	$0.091	$0.031	10

No minimum charge per vessel other than deposit minimum.

There is no maximum premium per fleet.

Letter of Credit requirements remain

$10 x g.t. for Tankers, subject $2,500,000 min, $20,000,000 max.

$ 6 x per g.t. for Non-Tank, subject $1,500,000 min, $12,000,000 max.

Required at inception: 50% of Programme Fee plus Voyage Premium for first two voyages.

Required at six months: 50% of Programme Fee.

U.S. OIL POLLUTION - CERTIFICATION UNDER OPA 90

This is sent to update the information given in our Circular 5:192 dated 11th November. It reports developments in respect of OPAClub, Shoreline and First Line.

1. General Considerations

1.1 These remain as stated in paragraphs 1.1 to 1.7 of the 11th November Circular.

Warnings

1.2 This opportunity is being taken to emphasise a warning, which applies to each of the three schemes, that reliance should not be placed on Members being able to pass through to Charterers the cost of any scheme, whether through Worldscale or by special agreement, even if that cost is expressed as a voyage premium instead of, or in addition to, an annual cost. It is suggested that Members should evaluate each of the three schemes on the assumption that the cost will have to be absorbed unless there is direct evidence to the contrary.

1.3 Warning is also given to any Member who has submitted or is intending to submit application procedures for any of these schemes. Members should be aware that participation in this process might become the basis of a binding contract at some stage unexpectedly without further confirmatory action. If this is not the present intention, lawyers should be consulted urgently in relation to the application process.

2. First Line

2.1 A public announcement of First Line's establishment appeared in Lloyd's List on Monday 14th November. This is the third approach adopted by their promoters to establishing First Line as a provider of the guarantees necessary to obtain COFR's. Subsequently, they have issued a fact sheet containing a revised rating tariff and other important information about their scheme including advance payment requirements; a copy is attached as Annex A.

2.2 As of 21st November the U.S. Coast Guard had not approved First Line.

2.3 Advice has been received that, at present, First Line is structured to provide guarantees only up to $150m, although it is intended to extend this limit, and additional reinsurance cover is being sought.

2.4 As some Members may be aware, First Line were seeking consent to an assignment of Members' rights; but this is no longer a requirement. First Line are preparing their documentation on this revised basis, but it is not yet available.

3. OPAClub

3.1 OPAClub has published its rating structure, of which a copy is attached as Annex B. The U.S. Coast Guard has approved OPAClub.

3.2 Willis Corroon and Sedgwicks have now successfully placed the "difference in defences" programme in the Lloyd's and London markets, which will substantially reduce the likelihood of any claims that fall on OPAClub being drawn from the Letters of Credit.

3.3 The amount of tonnage that has committed itself is now being assessed in order to determine the size of the surety bond to be provided to the U.S. Coast Guard. A call for Letters of Credit will follow shortly thereafter.

4. Shoreline

4.1 Shoreline placed an advertisement in Lloyd's List on 15th November drawing attention to the distinction between their product and others, namely the additional $300m layer of insurance cover which can sit above either $500m or $700m as Owners may require, and commenting on the cost of that cover. The tariff quoted is attached as Annex D. Shoreline has not been approved by the U.S. Coast Guard and still has to arrange a $300m loan facility.

4.2 However, Shoreline have clarified the premium structure given in that advertisement: "Certain people have commented on Shoreline's so-called minimum advance call of two voyages. Please note this is not a two voyage minimum. It is a deposit premium of one voyage plus the first voyage's premium in advance so there is always in hand a surplus to cover eventualities in case Shoreline is forced to give requisite notice to the U.S. Coast Guard. In the ordinary course of events, when a vessel is sold or disposed of and accordingly no longer requires the guarantee from Shoreline, the deposit premium will be returned to the Assured less any outstanding dues to the Association."

4.3 Shoreline is a mutual club and its Members are jointly and severally liable for all its liabilities. Supplementary Calls may be payable. Its promoters have advised that it has an extensive reinsurance programme, but for reasons of commercial confidentiality, have declined to disclose either publicly, or privately, their reinsurers' identity. Their solicitors, Penningtons, are prepared to give details of the selected reinsurers' investment ratings and the Bermudian authorities and the U.S. Coast Guard have been satisfied as to these reinsurance arrangements.

5. Comment

5.1 Members can now carry out cost comparisons between each scheme in the light of their own needs and circumstances. Members will also bear in mind the structural differences between the schemes, the potential liability upon Members in the event of a spill from another ship in the same scheme, and the extent to which each scheme has been developed.

6. Dry Cargo Ships

6.1 Members with existing certificates expiring after 28th December will be required to obtain COFR's under the new rules and each of these schemes can accommodate dry cargo vessels. However, Members can not yet undertake or confirm to Charterers that a new COFR will be available, until the schemes issue a bond or guarantee.

7. Further Information

7.1 Further details of each of the three schemes can be obtained from the promoters of the schemes. Contact details are as follows:
First Line (Bermuda) - Tel (809) 292 1552; Fax (809) 292 2091
OPAClub Centres - see Annex C attached

Shoreline (Bermuda) - Tel (809) 295 5688; Fax (809) 292 1867

ANNEX A

November 15, 1994

THE FIRST LINE PROGRAM FACT SHEET

Program Description

The First Line Program is a fixed cost, non-mutual, non-assessable program for providing guarantees to the U.S. Coast Guard that will enable shipowners to receive a COFR. There are no letters of credit required, no cash calls regardless of your, or others, loss experience, and a premium mechanism that is predominantly based on a per voyage charge. Any vessel insured by a P&I Club that is a member of the International Group of P&I Clubs is eligible for coverage. The First Line Program anticipates being able to meet the needs of tankers of all sizes as well as dry cargo vessels. The Program is accessible only through the use of a non-U.S. licensed insurance broker - no direct solicitations will be accepted.

Premium Rates

The rates listed below are the current rates for the First Line Program and as such they supersede any other previously circulated document or any advertisement.

Class 1 - Tankers Carrying Persistent Oil

$.50 per GRT per year annual premium
Minimum annual premium plus per voyage charge is $50,000 per vessel
15% discount off of the per voyage charge for double hull vessels
20 voyage maximum for the per voyage charge
There will be no fleet discount at this time
Per voyage charge as follows:

Vessel Age (in years)		Per Voyage Charge (per GRT)
1-5	(year built 1991-1995)	$.25
6-10	(year built 1986-1990)	$.26
11-15	(year built 1981-1985)	$.28
16-20	(year built 1976-1980)	$.32
21-25	(year built 1971-1975)	$.36
26 and older	(year built 1970 and earlier)	$.40

Class 2 - Tankers Not Carrying Persistent Oil

The shipowner must warrant the vessel **never** carries persistent oil on **any** of its trips into U.S. waters (the "persistent warranty")
$.50 per GRT per year annual premium
Minimum annual premium plus per voyage charge is $25,000 per vessel
15% discount off of the per voyage charge for double hull vessels
20 voyage maximum for the per voyage charge
The per voyage charge is $.10 per GRT regardless of the vessel's age
There will be no fleet discount offered at this time

Class 3 - Dry Cargo

$.25 per GRT per year annual premium

No per voyage charge
Minimum premium is $5,000 per vessel
If the vessel carries dry cargo and liquid cargo, the vessel will not be eligible for the dry cargo rate and it will be charged the tanker rates as discussed above

Premium Payment Terms Tankers and Dry Cargo

The per voyage charge deposit is due prior to coverage inception and must be remitted by wire transfer in U.S. dollars to your broker prior to receiving confirmation that a guarantee on your behalf has been issued to the U.S. Coast Guard. The per voyage charge deposit will be based on the greater of the average number of voyages to U.S. waters over the last three calendar years (or the average annualized number of voyages if the vessel is less than 3 years old) or the projected number of voyages for calendar year 1995. Premiums will be adjusted either up or down as of December 31st of each year based on actual voyages as reported to your P&I Club, except in the case of tankers operating under the "persistent warranty", for which another auditing system will be used in recognition of the fact that these voyages are not reported to your P&I Club; the first such adjustment will be on December 31, 1995.

Taxes and Fees

Please note, these premiums do not include any taxes or fees that may be the responsibility of the shipowner or its broker (e.g. U.S. Federal Excise Tax).

Term of Cover

The premium rates quoted above are for coverage for a 12 month period. The First Line Program will, however, provide a 14 month cover in its first year so as to renew all of its guarantees at the same time as the P&I Clubs renew their cover. Therefore, the initial premium will be the annual premium rates multiplied by 1.17.

Further Information

If you are interested in receiving an application that contains all of the representations and warranties that you must execute, the specific vessel information required, as well as the letter of undertaking that must be executed by the P&I Club insuring your vessel, please fax your name and address to **Sheila Nicoll, J&H Intermediaries** at **809-292-2091**. Neither the request for an application or the mailing of the application shall in any way constitute a commitment by the First Line Program to provide you with a guarantee. A guarantee will only be provided upon the execution of the application by both you and the guarantor and the payment in full of all annual premiums and per voyage charges due.

ANNEX B

OPACLUB RATING STRUCTURE

All rates expressed per gross ton

DIRTY TANKERS

	OPAClub Programme Fee	Voyage Premium for first two Voyages per Voyage	Voyage Premium for Subsequent Voyages per Voyage	Maximum Number of Voyages on which Premium Payable
AGE				
0-10	$0.80	$0.20	$0.10	10 (0-50,000gt) 8 (50-100,000gt) 6 (over 100,000gt)
11-20	$0.80	$0.215	$0.115	As above
Over 20	$0.80	$0.225	$0.125	As above
CLEAN TANKERS	$0.80	$0.1675	$0.0675	10
NON TANKERS	$0.48	$0.145	$0.045	10

Required at inception: 50% of Programme Fee plus Voyage Premium for first two voyages.

Required at six months: 50% of Programme Fee.

ANNEX C

OPACLUB CENTRES

Willis Corroon Marine & Energy/Americas, Inc.
7 Hanover Square
New York, New York 10004
Charles Steers 212 837-0836
David W. Clarke 212 837-0731
Fax Number 212 334-8442

Willis Corroon Marine & Energy/Americas, Inc.
One Riverway, Suite 900
Houston, Texas 77056
Bertil Olsson 713 625-1043
Fax Number 713 961-0441

Willis Corroon Marine & Energy/Americas, Inc.
801 North Brand Boulevard, Suite 310
Glendale, California 91203
Patrick Gallagher 818 552-4283
Gary Moore 818 552-4254
Fax Number 818 548-7578

Willis Faber & Dumas Limited

Marine Division
10 Trinity Square
London EC3P 3AX England
Nicholas Taylor 071-860 9703
Richard Pilkington 071-860 9787
Fax Number 071-860 9742

Sedgwick Marine & Cargo Limited
Sedgwick House, Sedgwick Centre
London E1 8DX England
Stephen Barton 071-377 3456
Fax Number 071-377 3199

ANNEX D

SHORELINE

THIS DOES NOT CONSTITUTE AN OFFER OF INSURANCE

TANKER RATING SCHEDULE

Where coverage in place for primary U.S. Oil Pollution Liabilities up to $500 million any one accident each vessel.
For the policy period 28th December 1994 through to 31st December 1995 both dates inclusive.
Based upon deadweight tonnage carrying capacity per voyage (maximum 20 voyages in any given Club policy year) undertaken in US$ per deadweight ton (minimum 10,000 D.W.T.).

Year of build of ship	**1991-95**	**86-90**	**81-85**	**76-80**	**71-75**	**1970 and earlier**
Dirty Oil (conventional construction)	0.38	0.40	0.42	0.44	0.46	0.48
Clean Oil (conventional construction)	0.18	0.19	0.20	0.21	0.22	0.23
Dirty Oil (mid-deck construction or double-bottom)	0.35	0.37	0.39	0.41	0.43	0.45
Clean Oil (mid-deck construction or double-bottom)	0.16	0.17	0.18	0.19	0.20	0.21
Dirty Oil (double skin)	0.32	0.34	0.36	0.38	0.40	0.42
Clean Oil (double skin)	0.14	0.15	0.16	0.17	0.18	0.19

Notes

1. If $200 million excess of $500 million oil pollution coverage is in place as a top-up to club entry, 12.5% discount off foregoing rating schedule will be granted.
2. Clean tankers (including L.P.G. carriers) are defined as carrying other than persistent oil as cargo.
3. Vessels are deemed to have been built in the year in which they are shown as completed in Lloyd's Register of Shipping.
4. For a parcel tanker:

a) where 5,000 tonnes or less of persistent oil is carried, the per voyage rate is calculated on the ship operating clean;
b) where more than 5,000 tonnes of persistent oil is carried, the per voyage rate is calculated on the ship operating dirty.

A parcel tanker is defined as a ship constructed or adapted primarily to carry cargoes of noxious liquid substances in bulk and capable of carrying at least 10 grades simultaneously, having been issued with an International Certificate of Fitness for the carriage of dangerous chemical in bulk. A parcel tanker's voyage will be determined by the number of bills of lading issued for each parcel discharged or loaded.

NON TANKER RATING SCHEDULE

Where coverage in place for primary U.S. Oil Pollution Liabilities up to $500 million any one accident each vessel.

For the policy period 28th December 1994 through 31st December 1995 both dates inclusive.

Based upon gross tonnage. Rates are annual advance call in US$.

Size of ship:

<1,500	3,000	30,001 - 35,000	8,250
1,500 - 5,000	3,750	35,001 - 40,000	9,000
5,001 - 10,000	4,500	40,001 - 45,000	9,750
10,001 - 15,000	5,250	45,001 - 50,000	10,500
15,001 - 20,000	6,000	50,001 - 55,000	11,250
20,001 - 25,000	6,750	>55,000	12,000
25,001 - 30,000	7,500		

Notes

1. If $200 million excess of $500 million oil pollution coverage is in place as a top-up to club entry, 12.5% discount off foregoing rating schedule will be granted.
2. Vessels are deemed to have been built in the year in which they are shown as completed in Lloyd's Register of Shipping.

U.S. OIL POLLUTION - CERTIFICATION UNDER OPA 90

Since our Circular 5:191 dated 24th October, we have continued discussions with the sponsors of First Line, OPAClub and Shoreline.

1. General Considerations

1.1 It is clear that for many Members operating tankers who need or wish to obtain a COFR within the Coast Guard deadline a decision must be taken as soon as possible. This Circular is directed to providing guidance to such Members; the impact on dry cargo vessels is less immediate but their needs are also being addressed.

1.2 The Coast Guard continues to state that it does not intend to grant a general extension of the deadline.

1.3 An immediate solution to the COFR problem should not prejudice either (a) the ability of Shipowners generally in future to challenge the basic provisions of OPA 90, or (b) the eventual development of a more satisfactory solution to the COFR problem itself.

1.4 The cost implications of the solution remain a critical consideration and reliance cannot simply be placed on Members being able to pass through the cost to Charterers or others, even if a voyage premium basis is adopted instead of or in addition to an annual cost. It would therefore be prudent to check with Charterers and/or potential Charterers as to whether they will in fact agree to absorb this cost or part thereof. We are not aware of any willingness on the part of the major Oil Companies to do so. (Nor are we aware of any intention by those Companies to require Members generally to purchase an additional $300m layer.) Moreover, the best information we can obtain suggests that it would not be wise for Members to assume that such cost will be included within Worldscale, even if premiums are expressed on a per voyage basis.

1.5 The quantity of tonnage which **must** commit to a scheme for COFR's prior to 28th December 1994 may be significantly smaller than the eventual number of ships which would like the option of a COFR for U.S. trading at some time in the future. There is a danger that each of the existing schemes may fail if each attracts part only of the relevant tonnage.

1.6 It should be noted that the guarantor can rely on the defence of "wilful misconduct" by the Responsible Party. This reduces the likelihood of the guarantor being able to recover from other participants in a mutual scheme in respect of a claim arising from circumstances where the P&I Club has a valid defence but the guarantor does not.

1.7 All three schemes have power to recover under indemnities given by the Responsible Party, independently of his right to recover from his P&I Club. Liabilities arising under such indemnities may not constitute a valid P&I claim.

2. First Line

2.1 First Line is now ready to do business. Johnson & Higgins (+(212)-574-8047) say First Line will be ready to receive applications from 14th November.

2.2 No tariff for First Line is yet available but a flat annual amount of $0.50 per gt together with a per voyage premium of $0.21 per gt is contemplated. This is an average rate with variations to be developed for different types of ship and/or cargo.

3. OPAClub

3.1 OPAClub is ready, and has revised its pricing structure. This is now based on an OPAClub programme fee of $0.80 per gt per annum, payable 50% on inception and 50% after six months. In addition participants will have to pay voyage premium for two voyages on inception. These vary depending on the age of the vessel and product carried - for a new tanker the figure is $0.20 per gt per voyage; so an additional $0.40 per gt is payable on inception. For any additional voyages over two the premium falls to $0.10 per gt. There are also caps on the number of chargeable voyages depending on tonnage. For non-tankers the OPAClub programme fee is $0.48 per gt - the voyage premium for the first two voyages is $0.145 per gt and for subsequent voyages $0.045 capped at a maximum of 10 voyages. For further details please contact OPAClub.

3.2 The concept of an advisory committee has been introduced into OPAClub in recognition of the desire of potential participants to gain influence over the operation and development of this scheme.

3.3 Letters of Credit remain central to this scheme, and there is provision for their release, possibly requiring payment of an additional premium. Participants are effectively providing their own share of the capital required and will be exposed to the risk of contributions in the event of the surety panel claiming an indemnity outside the scope of the "difference in defences" insurance or any failure thereof.

4. Shoreline

4.1 Shoreline is also ready, subject only to raising loan capital of $300m, but has a high cost (and the minimum Advance Call is based on at least two voyages) even allowing for its additional layer of $300m excess U.S. oil pollution cover, either over the $500m provided by the Clubs or over the $700m that is bought by many for the U.S. trade. The cost for tankers is based on a voyage premium with variations depending on factors such as construction and age of the ship and type of cargo. A new tanker carrying dirty oil will pay $0.38 per DWT each voyage - capped at 20 voyages a year. The risk to participants is reduced by the availability of reinsurance but, as Shoreline is a mutual, its membership will remain responsible for servicing its loan capital. Members also face the potential of Supplementary and Release Calls arising from the retention of $10m per claim, any failure of its reinsurance, and the ultimate repayment of the $300m loan.

5. General

5.1 All three schemes are now endeavouring to provide costs for tankers either wholly or in part on a voyage basis. Members should, however, bear in mind, as noted above, that recoverability from Charterers or inclusion in Worldscale is not guaranteed by any scheme.

We will advise you of further significant developments, but meanwhile hope that this Circular will assist those operating tankers who intend to meet the deadline to make timely decisions on the information presently available.

OPA 90 - COFR'S

We are writing to update Members as to schemes being promoted (as at 20th October 1994) for obtaining the necessary guarantees on the basis of which the USCG will issue a Certificate of Financial Responsibility (COFR) as required under OPA 90.

As Members are aware the Association (together with other Clubs in the International Group) is not able to provide such a guarantee.

OPACLUB

This scheme jointly promoted and marketed by Willis Coroon (+44-71-860 9703) and Sedgwick Marine & Cargo Ltd. (+44-71-377 3456), relies on guarantees to be given by a group of U.S. Surety Bonding Companies to the USCG. Owners are required to pay a premium of US$1.00 per ton for tankers or US$0.60 per ton for dry cargo vessels with a minimum premium of US$50,000 for tankers and US$25,000 for dry cargo vessels and a maximum premium of US$2m for tanker or mixed fleets and US$1.2m for a fleet of only dry cargo vessels.

In addition, Owners must provide a Letter of Credit for an amount equal to 10 times the appropriate premium for tankers or mixed fleets or 6 times the premium for a fleet of only dry cargo vessels.

OPAClub requires commitments from a minimum amount of tonnage before entering a binding commitment with the Surety Companies. They ask for Owners to apply or to make a commitment of collateral before 1st November 1994, following which a decision will be made after 5th November 1994, whether or not the scheme will proceed. For those Members who are interested in their scheme OPAClub request that arrangements be made immediately to receive the necessary Letters of Credit from Banks, having a representative office in the USA, and a Moodys Investor Services rating of A2 or better.

The OPAClub scheme has received approval from the USCG National Pollution Funds Centre.

SHORELINE

Press reports indicate that this new single purpose specialist mutual Association has completed its reinsurance programme and is close to becoming fully operational. It is intended to cover both Federal liabilities under OPA and CERCLA as well as State liabilities up to US$300m each accident or occurrence. Shoreline is incorporated in Bermuda and has obtained regulatory approval from the Bermudian Registrar of Companies. The USCG National Pollution Funds Centre has now approved Shoreline, but it is not yet operational.

Details of the premium to be charged by Shoreline can be obtained from their offices listed below. The rating structure is complex, but a tanker carrying dirty oil will, depending on age, pay between US$0.61 and US$0.76 per DWT per voyage - maximum 20 voyages per year.

Shoreline can be contacted through Shoreline UK (+44-71-606 1247), Penningtons (+44-71-457 3000), Shoreline Mutual Bermuda (+(809) 295-5688), or Shoreline USA (+(206)-282-7324).

The insurance cover to be provided by Shoreline in the event of an oil spill supplants that provided by the entry of a vessel in the Association. The Association has received legal advice to the effect that a Member will be unable to recover more than US$500m (the Association's limit of liability in respect of oil pollution liability) if the vessel is entered with both Shoreline and the Association - that means the first US$300m from Shoreline and subsequently US$200m from the Association.

FIRSTLINE

Johnson & Higgins New York (+(212)-574-8047) are promoting Firstline which is intended to provide an amended insurance guarantee to the USCG. It is not known how far they have progressed with raising capital, placing their Reinsurance programme or their pricing. It is anticipated that Firstline would only have to pay under its guarantee in limited and specified events involving the P&I Club declining to respond to an oil spill from an entered vessel. Its proposed costings are likely to reflect this limited exposure.

Firstline will be a proprietary Company aiming to make a profit for its shareholders.

BANKING ARRANGEMENTS

On 19th September 1994 the operational units of Barclays Bank, 9, Gracechurch Street, which currently provide banking services to the Association, are being relocated at a new City Service Centre managed from 54 Lombard Street, London. Whilst there is no change to the Association's U.S. dollar account number (68126322), we have been requested by Barclays to advise all parties that from the above date, when remitting U.S. Dollars, to follow the undermentioned instructions:

> "Please remit your payment by authenticated telex/SWIFT direct to Barclays Bank Plc, 75, Wall Street, New York, NY 10265 via CHIPS ABA 257 for credit to our Barclays G.T.S. London's account in their books. UID Number 279897, sub-account number 280-56-0009 for account of London Steam-Ship Owners' Mutual Insurance Association Limited, account number 68126322. Also send direct (telex/SWIFT) advice to Barclays Bank, 54, Lombard Street, London."

Therefore it will greatly assist in the receipt of funds if remitting Banks are instructed as above.

UNITED STATES OIL POLLUTION ACT (OPA 90)
CERTIFICATES OF FINANCIAL RESPONSIBILITY (COFRS)

On 1st July 1994, the United States Coast Guard (USCG) published an Interim Final Rule (IFR) under the Oil Pollution Act 1990. This IFR follows closely the notice of proposed rulemaking (NPRM) published in September 1991. The Association's present policy makes it impossible to issue COFRs nor does the IFR allow Owners to use their entry in the Association as backing for the required COFRs.

The timetable for vessels to provide evidence of financial responsibility to obtain COFRs is set out in tables issued by the USCG on 30th June 1994, the text of which is set out at the end of this circular.

The IFR will be considered by the U.S. House of Representatives' Coast Guard and Navigation Sub-Committee chaired by Congressman Tauzin on 21st July and representations and evidence will be given on behalf of the International Group of P&I Clubs. Unless the IFR is amended tanker owners will have to submit acceptable evidence of financial responsibility up to the OPA limits to the USCG by 28th December 1994. Other vessels have a slightly different schedule, as shown in the USCG tables.

The IFR allows for other forms of establishing financial responsibility:-

(a) Self-Insurance

This option is not practical for the vast majority of Members. It requires a regular demonstration to the USCG that the company's working capital and net worth exceed the amount of financial responsibility required under the IFR. Working capital means the amount of current assets located in the United States, less all current liabilities anywhere in the world; net worth means the amount of all assets located in the United States, less all liabilities anywhere in the world.

(b) Surety Bond

A Surety Bond may be filed for the maximum "applicable amount" relating to the Member's largest ship by an acceptable Surety company certified by the U.S. Department of the Treasury. There are Surety Bonding companies who may be prepared to provide Surety Bonds on behalf of Members provided that they are satisfied with the collateral provided by the Member. The cost may be negotiated but the Bonding company is likely to require further financial assurance from the Member in addition to evidence of cover from the Association.

Provision of evidence of financial responsibility using a Surety Bond will not have any impact on cover given by the Association.

(c) Alternative Insurance

Many Members may be aware of two proposed new vehicles for providing the necessary insurance backing to obtain COFRs, Shoreline Mutual and First Line. There may be other such vehicles of which the Managers are unaware. At present, the ability of these alternative vehicles to provide

COFRs has not been established, nor has the USCG confirmed that evidence of financial responsibility provided by them would be acceptable.

The Managers regret that the IFR is such as to make it impossible for the Association to provide Members with COFRs. The matter was reviewed by the Committee at their Meeting on 6th July, when they again confirmed previous policy that the Association will not give the guarantees necessary to obtain OPA 90 COFRs. The Managers will advise Members in the event of any developments which may assist in resolving inevitable problems.

In the meantime, we repeat the advice previously given in respect of Charterparty clauses and the P&I recommended clause on Evidence of Financial Responsibility is set out below. Members with particular problems in respect of previous commitments to trade to the United States are welcome to discuss them more fully with the Managers.

RECOMMENDED CLAUSE:
Financial Responsibility in Respect of Pollution

(1) Owners warrant that throughout the currency of this Charter they will provide the vessel with the following certificates:
   (a) Certificates issued pursuant to the Civil Liability Convention 1969 ("CLC").
   (b) Certificates issued pursuant to Section 311(p) of the U.S. Federal Water Pollution Control Act, as amended (Title 33 U.S. Code, Section 1321 (p)).

(2) Notwithstanding anything whether printed or typed herein to the contrary:
   (a) Save as required for compliance with paragraph 1 hereof, Owners shall not be required to establish or maintain financial security or responsibility in respect of oil or other pollution damage to enable the vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this Charter.
   (b) Charterers shall indemnify Owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the cost of any delay incurred by the vessel as a result of any failure by Charterers promptly to give alternative voyage orders) whatsoever and howsoever arising which Owners may sustain by reason of the vessel's inability to perform as aforesaid.
   (c) Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which Charterers and/or the holders of any bill of lading issued pursuant to this Charter may sustain by reason of the vessel's inability to perform as aforesaid.

(3) Charterers warrant that the terms of this Clause will be incorporated effectively into any bill of lading issued pursuant to this Charter.

COMPLIANCE SCHEDULE OF NEW COFR RULES FOR SELF PROPELLED TANK VESSELS*

(FEDERAL REGISTER PUBLICATION DATE OF JULY 1, 1994)

* This chart illustrates the COFR rule's implementation plan. If there is a conflict between this chart and the rule, the rule controls.

	7/1/94 through 12/27/94	12/28/94 through 12/27/95	Before 12/28/95	12/28/95
Vessel has old COFR prior to 7/1/94.	Vessel may continue to operate with old COFR.	Vessel must demonstrate new financial responsibility by 12/28/94. If demonstrated, vessel's old COFR is valid until 12/28/95.	Vessel must file a new COFR application form and obtain a new COFR.	Vessel must carry new COFR.
Vessel has old COFR that expires after 6/30/94 but before 12/28/94.	Vessel must renew old COFR before expiration date to continue operations in U.S. waters.	Vessel must demonstrate new financial responsibility by 12/28/94. If demonstrated, vessel's old COFR is valid until 12/28/95.	Vessel must file a new COFR application form and obtain a new COFR.	Vessel must carry new COFR.
Vessel has old COFR, but does not demonstrate new financial responsibility requirements by 12/28/94.	Vessel may continue to operate with old COFR.	Vessel's old COFR is revoked, and must file new COFR application form and demonstrate new financial responsibility.		
Vessel's old COFR expires after 12/27/94 but before 12/28/95.	Vessel may continue to operate with old COFR.	Vessel must demonstrate new financial responsibility by 12/28/94, and old COFR is deemed extended until 12/28/95.	Vessel must file a new COFR application form and obtain a new COFR.	Vessel must carry new COFR.

COMPLIANCE SCHEDULE OF NEW COFR RULES FOR NON-SELF PROPELLED TANK VESSELS*

(FEDERAL REGISTER PUBLICATION DATE OF JULY 1, 1994)

* This chart illustrates the COFR rule's implementation plan. If there is a conflict between this chart and the rule, the rule controls.

	7/1/94 through 6/30/95	Before 7/1/95	7/1/95
Vessel has an old COFR prior to 7/1/94 that does not expire until after 6/30/95.	Vessel may continue to operate with old COFR.	Vessel must file a new COFR application form, demonstrate new financial responsibility, and obtain a new COFR by this date.	Vessel must carry new COFR.
Vessel has an old COFR that expires before 7/1/95.	Vessel can renew old COFR before expiration date, or may obtain new COFR in accordance with new rules, after 12/27/94.	Vessel must file a new COFR application form, demonstrate new financial responsibility, and obtain a new COFR by this date.	Vessel must carry new COFR.
Vessel does not have an old COFR but needs a COFR between 7/1/94 and 6/30/95.	Vessel can file old COFR application form and demonstrate old financial requirements to obtain an old COFR or may obtain new COFR in accordance with new rules, after 12/27/94.	Vessel must file a new COFR application form, demonstrate new financial responsibility, and obtain a new COFR by this date.	Vessel must carry new COFR.

COMPLIANCE SCHEDULE OF NEW COFR RULES FOR VESSELS OTHER THAN TANKERS*

(FEDERAL REGISTER PUBLICATION DATE OF JULY 1, 1994)

* This chart illustrates the COFR rule's implementation plan. If there is a conflict between this chart and the rule, the rule controls.

	7/1/94 through 12/27/94	12/28/94 through 12/27/97	12/28/97
Vessel has old COFR prior to 7/1/94 that expires before 12/28/94.	Vessel can file old COFR application form and demonstrate old financial responsibility requirements to obtain an old COFR which is valid for three years.	Prior to the expiration of old COFR, vessel must file a new COFR application form, demonstrate new financial responsibility, and obtain a new COFR.	Vessel must carry new COFR by this date or earlier depending on expiration date of old COFR.
Vessel does not have old COFR but needs a COFR before 12/28/94.	Vessel can file an old COFR application form and demonstrate old financial responsibility requirements to obtain an old COFR which is valid for three years.	Prior to expiration of the old COFR, vessel must file a new application form, demonstrate new financial responsibility, and obtain a new COFR.	Vessel must carry new COFR by this date or earlier depending on expiration date of old COFR.
Vessel surrenders unexpired, old COFR for a name change.	Vessel obtains a replacement of old COFR with same expiration date of the surrendered, old COFR.	Vessel obtains a replacement of old COFR with same expiration date of the surrendered, old COFR. Before replacement COFR expires, vessel must file a new COFR application form, demonstrate new financial responsibility, and obtain a new COFR.	Vessel must carry new COFR by this date or earlier depending on expiration date of old COFR.
Vessel does not have an old COFR but needs a COFR after 12/27/94.	Vessel may apply for a new COFR.	Vessel must file a new COFR application form, demonstrate new financial responsibility requirements, and obtain a new COFR, before operating in U.S. waters.	Vessel must carry new COFR by this date.

CARRIAGE OF COAL

Members are referred to the previous Group Circular dated September 1991 in which Members' attention was drawn to the IMO Code of Safe Practice for Solid Bulk Cargoes dealing with the carriage of coal.

Members will be aware that a major feature of the requirements relating to the carriage of coal is to ensure that the ship has proper instruments to measure the concentration of methane, oxygen and carbon monoxide in the atmosphere within the hold. Instruments should also be provided to measure the temperature of the cargo in the holds without entering the holds or opening the hatch covers. It is also essential that the results of the testing should be properly recorded in order that the behaviour of certain coal cargoes can be assessed. This is particularly important in relation to coal cargoes shipped from areas where it is known that heating of the coal continues to cause problems such as Maputo and Indonesia.

The International Group is currently co-operating with the British Coal Technical Services & Research Executive which is acting on behalf of the British Government and IMO in monitoring the results of the carriage of coal in accordance with the new IMO Regulations so that the advantages of Atmospheric Testing can be evaluated more precisely. Members are therefore requested to make available, on a completely confidential basis, copies of the voyage reports which record the measurements taken on each voyage that coal is carried. The voyage reports should be sent directly to The British Coal Technical Services & Research Executive whose address is set out below:

British Coal Corporation,
Ashby Road, Stanhope Bretby,
Burton on Trent, Staffordshire, DE15 0QD

Your co-operation is essential to the success of the project.

UNITED STATES OIL POLLUTION - VESSEL RESPONSE PLANS, CHARTERPARTY CLAUSES

Members will be aware that a number of new Charterparty clauses are being proposed as a result of new United States Coast Guard (USCG) regulations, in particular those concerning Vessel Response Plans (VRPs).

Charterers' Requirements

Some Charterers are requesting Owners to warrant:

1. That they have submitted a VRP;
2. That the VRP meets in full the requirements of OPA 90 and any future regulation issued thereunder;
3. That the VRP will be approved;
4. That the ship will meet all other OPA requirements including those of any regulation or guidelines issued thereunder.

Although it is not unreasonable in a spot charter for an Owner to warrant the existence of matters of fact as at the date of the Charter, Members should be careful not to warrant performance in any Charter of matters over which they have no control (for instance, that the VRP will be approved); or of matters which they cannot know for certain (for instance, that the VRP meets in full the requirements of OPA 90). In addition, Members should take particular care not to warrant their ability to provide Certificates of Financial Responsibility. Although a warranty to meet all other OPA requirements does not specifically refer to Certificates of Financial Responsibility this would be a probable effect of the clause. Members are reminded of the Association's recommended clause entitled Financial Responsibility in Respect of Pollution, an updated version of which is reproduced below.

RECOMMENDED CLAUSE

Financial Responsibility in Respect of Pollution

(1) Owners warrant that throughout the currency of this Charter they will provide the vessel with the following Certificates:
   (a) Certificates issued pursuant to the Civil Liability Convention 1969 ("CLC").
   (b) Certificates issued pursuant to Section 311(p) of the U.S. Federal Water Pollution Control Act, as amended (Title 33 U.S. Code, Section 1321(p)).

(2) Notwithstanding anything whether printed or typed herein to the contrary:
   (a) Save as required for compliance with paragraph 1 hereof, Owners shall not be required to establish or maintain security or responsibility in respect of oil or other pollution damage to enable the vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this Charter.
   (b) Charterers shall indemnify Owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the cost of any delay incurred by the vessel as a result of

any failure by Charterers promptly to give alternative voyage orders) whatsoever and howsoever arising which Owners may sustain by reason of the vessel's inability to perform as aforesaid.

(c) Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which Charterers and/or the holders of any bill of lading issued pursuant to this Charter may sustain by reason of the vessel's inability to perform as aforesaid.

(3) Charterers warrant that the terms of this Clause will be incorporated effectively into any bill of lading issued pursuant to this Charter.

Facility Response Plans and Lightening

Under change No.2 to the USCG NVIC 8-92, Owners may rely on the response plan of a facility for dealing with "an average most probable discharge" when at a facility.

Lightening is not dealt with under USCG NVIC 8-92 and therefore there is potential confusion between the responsibilities of the lightening vessel and the lightened tanker in the event of a spill during lightening operations inside the Exclusive Economic Zone of the United States.

In this context Members may wish to ensure that any discharge at a facility or lightening operation only takes place where they can be assured that the facility or lightening vessel has adequate plans of which they can make use. Intertanko has drafted clauses for incorporation into Charterparties which cover these points. Members should also ensure that any contract for use of a facility or lightening vessel does not contain unacceptable indemnity clauses.

A similar Circular is being sent by the other Associations in the International Group.

CARRIAGE OF FOOD-STUFF IN BULK TO JORDAN
UNITED NATIONS TRADE EMBARGO WITH IRAQ

The Managers wish to bring to the attention of Members the increasing practice of some cargoes of food-stuffs (wheat, barley, rice and sugar) being discharged at Aqaba ostensibly for delivery to a Jordanian company, which are, in fact, cargoes intended for Iraq.

It is believed that the only body or corporation allowed to import such cargo into Jordan is the Jordanian Ministry of Supply. Therefore, it is highly probable that cargoes not consigned to the Jordanian Ministry of supply, are cargoes intended for Iraq.

In instances where official Aid cargoes are shipped to Iraq, they are authorised by Certificates issued by the United Nations.

Members' attention is drawn to Rule 13 relating to "Illegal, Hazardous or Improper Adventures". It will also be understood that the Association is unable to provide security for unauthorised cargoes intended for Iraq.

CREW CONTRACTS

The International Group of P&I Clubs ("The Clubs") cover their Members' liability to pay compensation in consequence of death, injury or illness of a seaman which arises under the terms of the crew contract, provided that the contract has been approved by the Managers of The Club.

For some years the I.T.F. standard contracts have provided that seamen who are injured in the course of their employment or whilst travelling to or from the ship are entitled to an annuity from their employer of up to 86% of basic pay in the event that the seaman is one hundred percent disabled. The Clubs have serious objections to such contracts. First, the potential maximum claim for a young man totally disabled is very large. Second, a seaman is in theory entitled to an annuity until death, not until retirement. Third, the contract states that any payment is without prejudice to any claim for compensation made in law and, fourth, the wording of the contract implies that the Shipowners are providing accident insurance for their employees.

The Clubs wish to make it clear that they will only cover crew contracts - I.T.F. or otherwise - on the above lines which have been entered into, or renewed, before 20th February 1993. This cover will terminate upon the expiry of the contract or 20th February 1994 whichever is soonest and be dependant upon it not having been possible to delete the offending provisions.

Discussions are taking place with the I.T.F. over the forms of contract which would be acceptable. These would contain lump sums and would also make it clear that any recovery thereunder would reduce any claim by the seaman in tort.

Members who have new contracts such as the above, or are contemplating entering into such contracts, should contact the Managers.

SHIP INSPECTIONS AND CONDITION SURVEYS

It is general practice for the Managers of P&I Clubs in the International Group to arrange from time to time inspections or condition surveys on board entered ships or prior to accepting new entries.

The Managers are fully aware that inconvenience can be caused by the proliferation of visits to ships by an increasing number of inspectors and surveyors, including most recently the detailed structural surveys required by some hull underwriters.

In order to minimise the number of separate visits to a ship Members are encouraged to advise the Managers in advance when one of their ships is due for inspection, for example, by a major oil company charterer or by the Salvage Association acting for hull underwriters. This will enable the Managers to decide if attendance at the same time by one of the Association's surveyors would be more convenient; or whether in the circumstances a separate survey is necessary.

UNITED STATES OIL POLLUTION -
VESSEL RESPONSE PLAN (VRP) REGULATIONS

Although final regulations for ship response plans under the Oil Pollution Act 1990 have not yet been published, the U.S. Coast Guard on 15th September issued interim guidelines for preparation of these plans. These apply to all ships which handle, store or transport oil in bulk as cargo, or cargo residue, operating in the navigable waters of the United States or transferring oil in the Exclusive Economic Zone of the United States. After 18th February 1993, a ship may not transport oil to the U.S. unless a response plan for it, which meets the requirements of the VRP regulations, has been submitted by the Owner or Operator to the U.S. Coast Guard for approval. After 18th August 1993 a ship may not transport oil unless it is operating in compliance with the plan filed with the U.S. Coast Guard. For a period of up to two years from the date of submission of the plan, a ship may continue to transport oil even though the plan has not yet been approved, if the Owner or Operator has certified that it has ensured by contract the availability of private personnel and equipment sufficient to respond to a worst case spill.

In accordance with the guidelines, plans are to be divided into the following ten elements:

1. General information and introduction
2. Notification procedures
3. Shipboard spill mitigation procedures
4. Shore-based response activities
5. List of contacts
6. Training procedures
7. Drill procedures
8. Plan review and update procedures
9. Geographic-specific appendices for each COTP (Captain of the Port) zone in which a ship operates
10. Appendices for ship-specific information.

The general section and the shipboard plans are broadly consistent with the recommendations of IMO and other bodies such as OCIMF and ITOPF.

However, the guidelines also provide for the plan to incorporate detailed information on the shore-side response which the Owner will implement in the event of a spill in any area which the ship visits. Central to this part of the plan is the identification of a "qualified individual" who must be resident in the United States and must have full written authority from the Owner to implement the response plan. This includes activating contracts with spill removal organisations, liaison with the Federal authorities and obligating the funds required to carry out all removal activities.

The guidelines also provide for the Owner to identify in the plan the shore-based organisational structure which will be used to manage the response actions. Each plan must then contain a separate Ageographic-specific≅ appendix for each zone in which the ship will operate. This will identify the spill management team and the contractors or others who will supply the equipment and resources required to deal with three categories of oil spill in that area, the average most probable discharge, the maximum most probable discharge and the worst case discharge. Detailed criteria are published in the

guidelines for determining the equipment and resources necessary for planning purposes in each of these cases.

In preparing these guidelines the U.S. Coast Guard appears to have ignored the comments of the International Group and other organisations who have suggested that these detailed shore-based plans are better prepared by the appropriate shore-based authorities or the terminal facility which will in any event be required to have its own response plan. The Group has also pointed out that it is effectively impossible for Owners to make these plans consistent with the National Contingency Plan and the Area Contingency Plans as required by the Oil Pollution Act 1990 when the National Contingency Plan has not yet been revised and the Area Contingency Plans are not yet prepared. However, the U.S. Coast Guard has stated in the interim guidelines that the current National Contingency Plan and the existing Local Contingency Plans of each On Scene Co-ordinator in force on 18th August 1992 should be used for the purpose of plans submitted to meet the 18th February 1993 deadline.

The Clubs in the International Group are not in a position to provide a "qualified individual" for Members and it remains to be seen whether any reputable organisations offer this service to Members who do not have a shore-based presence in the United States. It may be that the potential liabilities attracted by the qualified individual will act as a disincentive to those thinking of offering this service. It should be noted that the Clubs are not able to give specific additional cover for the liabilities of a qualified individual acting in this capacity either directly or by way of an indemnity from the Member.

In view of the potential direct exposure of Clubs to claims arising out of improper preparation of these plans, the Clubs will not become involved in detailed advice to Members in the preparation of their response plans, although it is anticipated that a number of independent firms in the United States will offer assistance in this respect. Again, it should be noted that the Clubs' cover is not designed to provide insurance for liabilities arising out of the failure to prepare an adequate plan or liabilities incurred solely as a result of a plan failing to work in practice. However, certain elements of the plan, such as provisions for liaison with the Club correspondents and the rates for clean-up contractors' services will clearly affect the Clubs. Members are recommended to discuss such aspects of their draft plans with the Club before submission to the Coast Guard. In addition, Members are advised that any contract with a response contractor should not contain an indemnity provision which transfers to the Member the results of any negligence on the part of the contractor, since liabilities arising under such an indemnity will not be covered by the Clubs.

Similarly Members should be prepared to abide by the terms of any payment conditions in such contracts without reliance on the Club for funding since the Clubs are unable to guarantee in advance of an incident that the Club will provide funding for the clean-up. To do so would be contrary to the principle that the Clubs act only a indemnity insurers which is central to the Clubs' attitude to certification under OPA 90.

THE HAMBURG RULES

Following the twentieth ratification in November 1991, the United Nations Convention on the Carriage of Goods by Sea 1978 ("The Hamburg Rules") will finally come into effect in November this year. Whilst the present list of Contracting States consists principally of the less substantial maritime nations[2], there must be some prospect that ratifications by other trading nations can be expected in the not too distant future.

It is the purpose of this Circular to provide preliminary advice to Members in relation to the scope of the application of the Hamburg Rules and to highlight some of the more significant changes that the Hamburg Rules will introduce. It is important to appreciate that at present these Rules will have a limited application and most contracts will continue to be governed by the Hague or Hague/Visby Rules.

The Hamburg Rules differ substantially in many important respects from the liability regimes created by the Hague and Hague/Visby Rules, and Members who engage in a substantial volume of trade to or from any of the Contracting States may wish to consider completely redrafting their shipping documentation to reflect the provisions of the Hamburg Rules. However for those who do not have the volume of trade to make such an exercise worthwhile, we do suggest very limited amendments may be desirable to Members' existing forms of shipping documentation.

1. VOYAGES AND CONTRACTS TO WHICH THE HAMBURG RULES APPLY

I The voyages to which the Hamburg Rules apply

The Hamburg Rules apply to contracts of carriage by sea between two different states (Article 2):

(a) when the port of loading is in a Contracting State; and/or
(b) when the bill of lading, waybill or other document evidencing the contract of carriage is issued in a Contracting State; and/or
(c) where the contract of carriage provides for the application of the Rules or any national law giving effect to them; and/or
(d) where the port of discharge is in a Contracting State or the optional port of discharge in fact used is in a Contracting State.

The main difference between the Hamburg Rules and the Hague and Hague/Visby Rules (as enacted in most states) is that the Hamburg Rules can apply to a voyage because of the state in which the port of discharge is located.

This is very significant at the present time because it can have the consequence that a carrying voyage can be subject to two inconsistent

[2]The list of Contracting States at present is as follows: Barbados, Botswana, Burkino Faso, Chile, Egypt, Guinea, Hungary, Kenya, Lebanon, Lesotho, Malawi, Morocco, Nigeria, Rumania, Senegal, Sierra Leone, Tanzania, Tunisia, Uganda, Zambia.

regimes, the cargo being loaded in a port where the Hague or Hague/Visby Rules are mandatorily applicable (for example the UK) and the cargo being discharged at a port where the Hamburg Rules are applicable (for example Egypt). The regime applicable would in practice depend on where the Court in which any proceedings were brought was situated. In the example given, a United Kingdom Court would treat the contract as being subject to the Hague/Visby Rules and an Egyptian Court would treat it as subject to the Hamburg Rules.

It is therefore essential that Members have an understanding of the jurisdictional provisions of the Hamburg Rules which are very far reaching.

II Jurisdiction under the Hamburg Rules

The Hamburg Rules give the cargo claimant a number of options as to where Court proceedings can be commenced (Article 21):

(a) The principal place of business of the carrier.
(b) The place where the contract of carriage was made provided the Defendant had a place of business, branch or agency there through which the contract was made.
(c) The ports of loading or discharge.
(d) Any place named in the contract of carriage.

In addition there is a right to initiate proceedings in any Contracting State where the vessel or a vessel in the same ownership can be arrested. Similar provisions apply to arbitration clauses so that even if the bill of lading contains a place of arbitration in a non-Contracting State, the Claimant can commence arbitration in a Contracting State if by the law of that state the Hamburg Rules apply to the voyage (Article 22).

The Hamburg Rules also attempt to ensure that even if proceedings are commenced in a non-Contracting State, the provisions of the Rules will still apply. By Article 23(3), the document evidencing any contract of carriage which is subject to the Hamburg Rules must contain a statement that the contract of carriage is subject to the Hamburg Rules and that any stipulation to the contrary to the detriment of the shipper or consignee is void.

Where a bill of lading contains such a statement, a Court in a Hague or Hague/Visby Rules Contracting State may well apply the Hamburg Rules to the contract, at least insofar as they place a heavier duty on shipowners, because Article V of the Hague and Hague/Visby Rules allows the carrier to surrender his rights under those rules.

Where no such statement is contained on the bill of lading, Article 23(4) of the Hamburg Rules obliges the carrier to compensate the claimant for any loss he has suffered by reason of its omission. It would appear that one of the purposes of this provision is to enable the cargo claimant to sue for damages in a Contracting State if, by reason of the absence of such a statement on the bill, the cargo claim has been dealt with in a non-Contracting State without regard to the Hamburg Rules. Members should therefore be aware of the potentially adverse consequences of omitting such a statement from their bills on voyages to which the Hamburg Rules apply.

III The contracts to which the Hamburg Rules are applicable

The Hague and Hague/Visby Rules apply to contracts covered by bills of lading, similar documents of title and certain other documents if they incorporate a clause paramount. The Hamburg Rules are wider in scope in that they apply to all contracts of carriage by sea whatever type of document is issued or even if no document is issued. The only exception is a Charterparty to which the Rules do not apply. The Rules contain no definition of Charterparty.

2. THE HAMBURG RULES APPLY TO ALL CARGO CARRIED ON VOYAGES TO WHICH THEY ARE APPLICABLE

A major difference between the Hamburg Rules and the Hague and Hague/Visby Rules is that the Hamburg Rules apply to deck cargo and live animals.

Under the Hamburg Rules (Article 9) the carrier is only entitled to carry cargo on deck if there is an agreement with the shipper, a trade usage or an appropriate statutory regulation authorising such carriage. Otherwise, the carrier is liable for all loss and damage and delay insofar as it results from carriage on deck, although the carrier will still be entitled to limit his liability (unless cargo is carried on deck contrary to an express agreement that it should not be so carried, in which case there is no right to limit for such loss). Where cargo is properly carried on deck the usual Hamburg Rules regime will apply.

If the cargo is carried on deck by agreement with the shipper, that agreement must be recorded in the contract of carriage (Article 9(2), Article 15(1)(m)). Members must therefore provide for this on the face of the contract of carriage and this may be most conveniently done by stamping a clause allowing carriage on deck on the face of their bill of lading. A recommended form of clause for over-stamping is attached. If this is not done, then the carrier will be liable for loss, damage and delay resulting from carriage on deck.

It is unclear from the text of Article 15(1)(m) of the Hamburg Rules whether it is necessary for a bill of lading in respect of cargo being carried on deck by a trade usage or an appropriate statutory regulation to state expressly whether cargo is or may be carried on deck. Members should therefore, whenever cargo is or may be carried on deck, record on the face of the bill of lading the fact that the cargo is or may be carried on deck. Use of a liberty clause may not be sufficient.

So far as live animals are concerned, the carrier will not be liable for loss, damage or delay due to any special risk inherent in the carriage of live animals, and that loss is presumed to result from such special risk if the carrier can show that he has followed all the shipper's instructions and there is no evidence that the loss resulted from the carrier's fault or neglect (Article 5(5)). In other cases, the normal Hamburg Rules regime will apply.

3. THE MORE SIGNIFICANT CHANGES EFFECTED BY THE HAMBURG RULES

Unlike the Visby amendments to the Hague Rules which built upon a well-understood and tested system of defining rights and liabilities, the Hamburg Rules establish an entirely new system of rights and liabilities. It is therefore important that Members whose trade will involve them in trading to and from states which are contracting parties to the Hamburg Rules familiarise themselves with the new regime. The following paragraphs merely draw attention to the more important changes.

I Period of responsibility

Under the Hamburg Rules (Article 4) the responsibility of the carrier for the cargo is extended to cover the entire period from the time he takes charge of the cargo at the port of loading to the time when he delivers it at the port of discharge. The period of responsibility is much wider than the Atackle to tackle≅ responsibility under the Hague and Hague/Visby Rules.

In circumstances where the goods are not delivered direct to the consignee at the port of discharge, the carrier's liability ceases when the goods are placed "at the disposal of the consignee in accordance with the terms of the contract". Members may wish to consider inserting provisions into their bills of lading defining the point where the cargo is to be placed at the consignee's disposal.

II Basis of liability

The liability of the carrier under the Hamburg Rules is based upon the principle of "presumed fault": the carrier is liable for loss resulting from loss or damage to the goods or delay in delivery if the occurrence giving rise to the loss took place whilst the cargo was in his care unless the carrier proves that he, his servants and agents took all measures which could reasonably be taken to avoid the occurrence in question. Liability may therefore be more extensive than under the Hague and Hague/Visby Rules - and in particular the defence of negligent navigation does not apply.

There is an exception to the presumed fault principle where loss, damage or delay has been occasioned by fire: in these circumstances, the burden will lie upon the claimant to show that the fire, or the loss, damage or delay which resulted from it, resulted from the carrier's fault (Article 5(4)).

III Limits of liability

The carrier can limit his liability to whichever is the greater of the following (Article 6):

- 835 SDR's per package or other shipping unit or
- 2.5 SDR's per kilogram of gross weight of the goods lost or damaged.

These limits are about 25% higher than the corresponding limits under the Hague/Visby Rules.

The right to limit is lost where the carrier's act or omission is done with intent to cause such loss, damage or delay or is done recklessly with knowledge that such loss, damage or delay will probably result (Article 8).

IV Liability for delay

The Hamburg Rules contain detailed provisions imposing on the carrier liability for delay in delivery when the goods are not delivered within the time expressly agreed for delivery, or in default of such agreement "within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case" (Article 5(2)). It is important to note that under the Hamburg Rules (Article 5(3)) if the goods are not delivered within 60 days of the appropriate time for delivery, they may be treated as lost.

These provisions give rise to difficult problems and Members, whose trade will involve carriage subject to the Hamburg Rules, should consider them very carefully.

Liability for delay is limited to two and a half times the freight for the goods delayed, or the total freight payable under the contract of carriage, whichever is the lower. However such liability cannot exceed that which would have been payable had the entire cargo been lost (Article 6(1)(b)).

V The identity of the carrier

In general terms, the person by whom or in whose name the contract of carriage is concluded with the shipper is liable under the Hamburg Rules as the carrier. The name and principal place of business of the carrier must be identified on the face of the bill of lading. Members may wish to note that there is some controversy as to whether demise clauses will remain effective.

In addition if the whole or a part of the carriage is performed by another person, that person is also liable as the "actual carrier" for loss, damage or delay caused by an occurrence occurring whilst the goods are in his charge, but he is entitled to the limits of liability imposed (Article 10).

VI The contents of the bill of lading

Under the Hamburg Rules the shipper is entitled to demand a bill of lading (Article 14) and more extensive requirements as to the matters to be recorded on the bill of lading are imposed (Article 15). In addition to those already mentioned (deck cargo and the name of the carrier), the most important matters include the date on which the carrier took over the cargo, the date or period for the delivery of the goods (if any has been expressly agreed upon) and the freight to the extent that the consignee is expected to pay it.

VII Limitation of actions

The period in which a claim can be brought against the carrier has been extended under the Hamburg Rules to 2 years, except in relation to claims for General Average and for an indemnity (Article 20).

4. DOCUMENTATION FOR THE COMPETING REGIMES

The Hamburg Rules are of wide scope and, where they are applicable, they have altered a number of the fundamental assumptions which underlie the drafting of existing shipping documents. This Circular does not attempt to

address these wider considerations, because for the majority of Members the Hamburg Rules will be of limited application. However Members whose trade will involved them extensively with the Hamburg Rules may wish to consider a more fundamental reappraisal of their documents.

For the majority of Members, it is probably sufficient at present to consider using the clause paramount set out in Form A and the attached form of over-stamping for cargo to be carried on deck with the agreement of the shipper under the Hamburg Rules.

FORM A

This form is recommended for Members who wish to adopt the Hague or Hague/Visby Rules in preference to the Hamburg Rules where possible, with the result that where one of these regimes would be applicable on its own terms by reason of the location of the port of shipment (or in a few states by reason of the port of discharge), it has been preferred. Members should be aware, however, that there can be no guarantee that proceedings will be commenced in a state that is not a contracting party to the Hamburg Rules and any cargo claimant may have the right to bring separate proceedings in the Courts of a State party to the Hamburg Rules in a case where the Hague or Hague/Visby Rules have been applied in preference to the Hamburg Rules.

FORM B

This clause has been drafted solely with a view to compliance with Articles 23(3) and (4) of the Hamburg Rules. FOR THIS REASON IT SHOULD ONLY BE USED WHEN THE CARRIAGE BY SEA IS BETWEEN TWO STATES THAT ARE CONTRACTING PARTIES TO THE HAMBURG RULES.

In recommending the use of the clauses, we draw attention to the following points:

(i) For the reasons stated, mere adoption of a Clause Paramount is not of itself enough to render shipping documents entirely appropriate for use on voyages to which the Hamburg Rules apply.

(ii) The clauses have been designed primarily for use in connection with bills of lading which are subject to an English proper law clause and with a view to English jurisdiction. Those of our Members whose bills are subject to the law of a state other than the United Kingdom should seek advice from lawyers in that state as to whether the clauses meet the requirements of local law. This applies in particular to Members whose bills of lading are subject to the jurisdiction of the United States, as the Courts of the United States will construe any ambiguity in a bill against the carrier.

(iii) Members who may contemplate adopting the clauses for insertion in their bills of lading should seek confirmation from the Association's Managers that the clause is suitable for adoption by them before making any amendments.

5. COVER FOR THE HAMBURG RULES

Members are reminded that, subject to a discretion being exercised otherwise in accordance with the Rules, liabilities, costs or expenses arising from the

carriage of cargo on terms less favourable than those of the Hague or Hague/Visby Rules will not be covered. However, where the carriage of cargo is on such terms solely because of the compulsory application by operation of law of the Hamburg Rules to the contract of carriage, cover will be available. If a Member voluntarily adopts the Hamburg Rules for a voyage to which the Rules do not compulsorily apply, his cover will be prejudiced.

FORM A

(1) This bill of lading shall have effect subject to any national law making the International Convention for the Unification of certain rules of law relating to bills of lading signed at Brussels on 25th August 1924 (the Hague Rules) or the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968 (the Hague/Visby Rules) compulsorily applicable to this bill of lading. If any term of this bill of lading be repugnant to that legislation to any extent, such term shall be void to that extent but no further. Neither the Hague Rules nor the Hague/Visby Rules shall apply to this contract where the goods carried hereunder consist of live animals or cargo which by this contract is stated as being carried on deck and is so carried.

(2) Save where the Hague or Hague/Visby Rules apply by reason of (1) above, this bill of lading shall take effect subject to any national law in force at the port of shipment or place of issue of the bill of lading making the United Nations Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) compulsorily applicable to this bill of lading in which case this bill of lading shall have effect subject to the Hamburg Rules which shall nullify any stipulation derogating therefrom to the detriment of the shipper or consignee.

(3) Where the Hague, Hague/Visby or Hamburg Rules are not compulsorily applicable to this bill of lading, the carrier shall be entitled to the benefits of all privileges, rights and immunities contained in Articles I to VIII of the Hague Rules, save that the limitation sum for the purposes of Article IV Rule 5 of the Hague Rules shall be £100 sterling.

FORM B

(1) This bill of lading shall have effect subject to any legislation making the United Nations Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) compulsorily applicable to this bill of lading and in such circumstances the said Rules nullify any stipulation derogating therefrom to the detriment of the shipper or consignee. If any term of this bill of lading be repugnant to the legislation to any extent, such term shall be void to that extent but no further.

(2) Save where the Hamburg Rules apply be reason of (1) above, this bill of lading shall have effect subject to any national law making the International Convention for the Unification of certain rules of law relating to bills of lading signed at Brussels on 25th August 1924 (the Hague

Rules) or the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968 (the Hague/Visby Rules) compulsorily applicable to this bill of lading. If any term of this bill of lading be repugnant to that legislation to any extent, such term shall be void to that extent but no further. Neither the Hague Rules nor the Hague/Visby Rules shall apply to this contract where the goods carried hereunder consist of live animals or cargo which by this contract is stated as being carried on deck and is so carried.

(3) Where the Hague, Hague/Visby or Hamburg Rules are not compulsorily applicable to this bill of lading, the carrier shall be entitled to the benefits of all privileges, rights and immunities contained in Articles I to VIII of the Hague Rules, save that the limitation sum for the purposes of Article IV Rule 5 of the Hague Rules shall be ,100 sterling.

CLAUSE FOR OVER-STAMPING FOR CARGO CARRIED ON DECK WITH THE AGREEMENT OF THE SHIPPER

The shipper has agreed that the cargo carried under this bill of lading may be carried on deck or under deck at the carrier's option.

P&I CERTIFICATES OF ENTRY - KOREAN PORTS

The attention of Members is drawn to a recent decision of the Korean Maritime Port Authority (KMPA) to ban the entry of any vessel into Korean Ports which is not entered in a P&I Club for oil pollution cover.

All vessels calling at Korean Ports must now present a current P&I Certificate of Entry to the KMPA at the time of seeking clearance for entry to the port. It is understood that whereas the original Certificate of Entry is preferable, a copy of the Certificate is at present acceptable. Members are recommended to ensure that all their vessels calling at Korean Ports in future have a current Certificate of Entry on board.

CERTIFICATES OF ENTRY

For 1992/93 all certificates of entry which are issued by the Club will automatically contain the following endorsement:

> "This certificate of entry is evidence only of the contract of indemnity insurance between the above named Member(s) and the Association and shall not be construed as evidence of any undertaking, financial or otherwise, on the part of the Association to any other party.
>
> If a Member tenders this certificate as evidence of insurance under any applicable law relating to financial responsibility, or otherwise shows or offers it to any other party as evidence of insurance, such use of this certificate by the Member is not to be taken as any indication that the Association thereby consents to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Association does not so consent".

The purpose of the endorsement is to make clear to Members and to any person who may receive a copy of a certificate of entry from a Member or his agent that the copy of the certificate is no more than evidence of the Member's entry in the Club at a particular date.

OIL POLLUTION LEGISLATION IN THE UNITED STATES: CERTIFICATION REQUIREMENTS

Legislation in Individual States

As predicted in the Circular issued in July 1990 several States have introduced new legislation dealing with oil pollution. Details of the legislation are available on request. On the issue of certification it is perhaps sufficient to say that the Clubs have been successful in explaining why Club Boards have taken the view that the Clubs are unable to act as guarantors with regard to oil pollution liability. As a consequence State legislation generally permits vessels to trade without the onerous requirement of providing a guarantee, although various different techniques are employed to ensure that the vessel is properly insured. The one exception is the state of Alaska where Charterers have accepted to act as guarantors under Alaskan law.

Proposed Federal Regulations

The U.S. Coast Guard has issued an Advance Notice of Proposed Rulemaking which reflects the view that the Oil Pollution Act 1990 (OPA 90) requires a guarantor before a certificate can be issued and that the Act contains no flexibility in this regard.

A hearing was called by the House of Representatives Coastguard Sub-Committee at which the USCG were criticised for adopting too restrictive a view of the intent of OPA 90. At the same hearing the Clubs and other insurers were able to explain why they were unable to act as guarantors. Shipowners were also able to explain that unless the USCG were to modify its proposals shipowners would be unable to trade to the USA. In addition proposals were made as to methods whereby shipowners' position could be rendered less precarious under OPA 90.

It is difficult to predict what the outcome will be but it is now generally understood that the Clubs and other underwriters are not prepared to act as guarantors. Alternative solutions must therefore be found. In the meantime the USCG is charged with the task of providing an assessment of the economic impact of its proposed regulations. It seems unlikely therefore that final regulations will be published in the near future. In the meantime existing procedures regarding certification under the Clean Water Act are being maintained. These certificates enable operators to comply with the financial responsibility requirement of OPA 90 until the final regulations are published.

This Circular is issued in an attempt to keep Members informed so far as possible of a changing, fluid position. Further reports will be made from time to time as necessary.

CARRIAGE OF COAL

At a meeting of the Sub-Committee of IMO on Containers and Cargoes in London in January 1991 the schedule of Appendix B of the Code of Safe Practice for Solid Bulk Cargoes dealing with the carriage of coal was substantially revised. One of the main changes was to eliminate the system of coal classification. Instead it was decided that a system which described the behavioural chemical properties and physical characteristics of coal cargoes should be adopted. The new schedule took effect from 1st June. Members are therefore advised that the Group Circular of March 1982, dealing specifically with the Carriage of Coal from the U.S. Gulf Ports, is superseded by this Circular which applies to all coal cargoes shipped from anywhere in the world. However, shipment of coal from U.S. Gulf Ports, particularly in the summer months, continues to give rise to special problems when coal is loaded directly from barges and it is still recommended that barge temperatures be obtained prior to shipment.

The revised schedule deals specifically with the following:

1 Segregation and stowage requirements;
2 General requirements for all coals;
3 Special precautions for coals emitting methane; and
4 Special precautions for self-heating coals.

Full details of the revised schedule for coal can be obtained directly from IMO, or if Members have difficulty obtaining this information, directly from the Association.

It is felt to be appropriate to draw Members' particular attention to the increased burden on them to ensure that, if coal cargoes are to be carried, the ship has the proper instruments to monitor the coal during the period of carriage and, in addition, to ensure that the Master and officers are instructed in the use and maintenance of instruments, including servicing and calibration. The appropriate instruments should be able to measure the concentration of methane, oxygen and carbon monoxide in the atmosphere and to test the p^H of the bilge water samples. Instruments should also be provided to measure the temperature of the cargo in the holds without entering the holds or opening the hatch covers. It is also essential that the results of the testing should be properly recorded in order that the behaviour of certain cargoes may be made known for future shipments. The frequency of the testing should depend upon the information provided by the shipper and the results obtained during and after loading. In addition, prior to shipment, the Master should ensure that he receives from the shipper or the shipper's agent, in writing, details of the characteristics of the cargo. This detail should, as a minimum, include the contract specification for moisture, sulphur and size, and particularly whether the cargo is liable to emit methane or self-heat so that the appropriate special precautions for carriage as set out in the revised schedule can be followed.

Trimming of cargo is still extremely important and the new code assists to the extent that it recommends "the shipper should ensure that the Master receives the necessary co-operation from the loading terminal".

If at the time of loading the Master is in any doubt about the safety of the cargo, or about the appropriate precautions which should be taken to ensure its safe carriage, he should immediately contact the Association's local correspondent for assistance.

CARRIAGE OF EDIBLE OILS/PERMITTED PREVIOUS CARGOES

The attention of Members is drawn to the previous Group Circular dated July 1989.

In the intervening period extensive discussions have taken place between representatives of shipowners, shippers, FOSFA International and NIOP. As a result thereof FOSFA International have now issued a revised list of permitted previous cargoes which will be effective 1st July 1991. NIOP whilst agreeing the FOSFA International list are seeking to extend the list to include dipentine and nitric acid. It is however felt that these should not be on the list of permitted previous cargoes.

With effect from 1st July 1991 FOSFA International have issued as part of their trading conditions operational procedures for ocean carriers which includes a stipulation that the immediate previous cargo for the tanks, lines and pump system designated to load oils and fats must have been on the FOSFA International list of acceptable previous cargoes or not on the FOSFA International list of banned previous cargoes currently in force whichever is appropriate. In addition FOSFA International have issued initial procedures and qualifications for incorporation into trading contracts as follows:

1 Operational procedures for ocean carriers of oils and fats for edible and oleo-chemical use, effective 1st July 1991.
2 Operational procedures for transhipment vessels on discharge of ocean carriers, effective 1st August 1991.
3 Qualification for all ships engaged in the ocean carriage and transhipment of oils and fats for edible and oleo-chemical use, effective 1st August 1991.

Members are recommended to ensure that the requirements and recommendations now stipulated by FOSFA International be complied with.

If Members have difficulty in obtaining the appropriate information copies can be obtained from the Association.

December 1990 (5:153) Group

FLORIDA OIL POLLUTION LEGISLATION - CERTIFICATION REQUIREMENT

The International Group Circular of July 1990 referred to individual State legislation, particularly in respect of evidence of financial responsibility.

From November 1990 the State of Florida has started to enforce the requirements under recent State legislation for evidence of financial security in respect of oil spill clean-up costs. The revised legislation requires that any Owner or operator of a vessel transporting pollutants as cargo within Florida's territorial waters must have and maintain financial security for each vessel in the amount of US$50m or US$625 per gross registered ton, whichever is the less.

The statute defines pollutants as oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine and derivatives thereof, excluding liquefied petroleum gas.

A certificate or evidence of compliance with the financial security requirements imposed by Federal law is not an acceptable form of proof of financial responsibility as required by the legislation of the State of Florida.

In these circumstances, Members will be aware that the undersigned Associations will not provide additional certificates to enable Owners to comply with the requirements of Florida State Law.

The State authorities (the Department of Natural Resources) have indicated that a cash deposit or a surety bond or guarantee from a company showing sufficient assets within the jurisdiction will be acceptable. It is understood that in some cases such a surety bond or guarantee has been provided by Charterers on the Owner's behalf. In some cases the Owner himself may be in a position to provide a suitable certificate of the company's assets signed by an appropriate officer of the company. Further advice on how to comply with the requirements of the State Law may be sought from the Club correspondents in Florida.

Florida State Law also provides for a civil penalty in the amount of US$25,000 in respect of each violation of this requirement.

July 1990 (5:149) Group

OIL POLLUTION LEGISLATION IN THE UNITED STATES - STATE REQUIREMENTS FOR CERTIFICATES OF FINANCIAL RESPONSIBILITY AND CONTINGENCY PLANS

In the aftermath of the "EXXON VALDEZ" oil spill in Alaska and other recent pollution incidents in the United States, many individual States have prepared new legislation or amendments to their existing State legislation on oil pollution. It is now likely that the proposed new Federal legislation on oil pollution currently under consideration in Washington D.C. will not pre-empt individual States from enacting such legislation and that the new Federal regime will not make provision for the 1984 Protocols to the CLC and Fund Convention.

The International Group has received notice of new or proposed new State legislation in the States of Washington, Alaska, California, Maryland, Rhode Island, Virginia and others. In view of the proliferation of this activity and the efforts of the Group in respect of the Federal legislation, it has not been practical for the Group to attempt to lobby on behalf of shipowner Members in those States which have been considering such legislation. Some States have legislation which places unlimited liability on Owners for oil pollution and, possibly, the added burden of severe civil penalties. Subject to limitation rights that may be available under the Federal Limitation of Liability Act, Owners trading to those States, including dry cargo vessel Owners, should be aware that they are potentially exposed to liabilities in excess of the insurance cover provided by the Clubs. The details of each State's proposals inevitably vary and Members are advised to check through their agents for changes in State laws or regulations applying to the ports visited by their ships.

However, two requirements of certification and contingency plans are common to many of these State laws and Members are reminded of the general policy of the Clubs in the International Group bearing on these issues.

As far as the certification is concerned, Members will be aware that the Clubs will not issue certificates of financial responsibility for pollution by oil or other substances to enable Members to comply with the requirements of individual States. In the past some individual States have been prepared to accept the Federal certificate issued by the United States Coast Guard under the provisions of the Federal Water Pollution Act as satisfactory compliance with State law. However one exception has been the State of Alaska where separate evidence of financial responsibility has been required as provided by Alaska State Law. In the absence of a certificate from the Club, Members have often relied upon Charterers or other interested parties to supply this evidence for them against an indemnity.

In the past, the Clubs in the International Group have been prepared to provide a letter in standard wording to the Charterers confirming to the Charterers that the Member's ship is covered for pollution risks, and that the Club will respond under certain circumstances to claims made under the certificate of financial responsibility.

In view of the anticipated proliferation of similar requests, we now give notice that the Clubs will no longer be prepared to provide a letter in these terms to the party providing the required evidence on a Member's behalf. In the event that commitments under these letters are still current in Alaska, the Club concerned will be giving notice that the relevant letters will be withdrawn at the earliest available opportunity.

Members are advised to exercise caution in accepting the terms of any indemnity which may be requested by a party offering to provide evidence of financial responsibility on the Member's behalf to comply with any relevant State law. The Clubs will not be prepared to acknowledge such an indemnity to the provider of the relevant certificate and furthermore the terms of the indemnity requested may also prejudice the Member's cover with the Club.

Members are encouraged to consult the Club in advance if such an indemnity is requested.

The requirement for certain vessels to have prepared contingency plans approved by the relevant authorities is already a feature of some State laws.

The Clubs are happy to assist Members to obtain advice on compliance with such requirements, if requested, but where Members are relying on a third party to provide the contingency plan or obtain the necessary approval from the State authorities, Members should be particularly careful to scrutinise the terms of any indemnity which may be requested and to refer the wording to the Club for confirmation that the liabilities arising under the indemnity can be covered by the Club. Members are again reminded that liabilities arising under the terms of any such indemnity are only covered if and to the extent that the indemnity has previously been approved by the Club.

To summarise, to avoid incurring liabilities in excess of Club cover, Members are advised:

1 To check with their local agents for changes in State laws or regulations applying to ports to be visited by their ships and

2 To scrutinise the terms of any indemnity which may be requested and to refer the wording thereof to the Club for confirmation before signing.

BILLS OF LADING: DELIVERY OF CARGO AGAINST ONE ORIGINAL BILL OF LADING CARRIED ON BOARD

Members will recollect that previous Group Circulars, in April 1979 and March 1984, pointed out that liability arising from delivery of cargo without production of the bill of lading is not recoverable under the Rules of the Group Associations unless a Board or Committee of an Association in a particular case should decide otherwise. The Circular of March 1984 specifically warned Members of the dangers inherent in the practice of retaining one original bill of lading on board the ship during the voyage and giving delivery of the cargo at the discharge port against that document.

Since that time, a number of efforts have been made by interested parties to improve the unsatisfactory legal and commercial aspects of continuing to trade cargoes by reference to three original paper bills of lading. The increasing use of SeaWaybills and the potential of electronic data interchange are contributing to possible solutions to these problems. However, no universally acceptable system has yet been devised and in the meantime, Members will be aware that the practice of the Master carrying on board one of a set of three original bills of lading, so that the cargo may be delivered against the same bill of lading, remains commonplace. Whilst this practice avoids delivery of cargo without production of an original bill of lading, it will not necessarily protect the shipowner from a claim for misdelivery of the cargo.

Where a set of original bills of lading is issued, endorsement and transfer of any one of the set may be sufficient to transfer the ownership of the cargo. When an incomplete set of bills of lading (two of three originals) has been in circulation during a voyage, there remains the risk that the party demanding delivery against the single original bill of lading retained on board will not acquire title to the cargo by reference to the other two original bills of lading which have been negotiated. Delivery in exchange for the bill of lading carried on board might result therefore in a misdelivery of the cargo. In some jurisdictions a shipowner could be liable for a claim based on such misdelivery. If a claim is brought for misdelivery, it is likely to be for the full value of the cargo.

The undersigned Associations repeat their earlier recommendations to their Members to resist requests to carry one of a set of original bills of lading on board. If Members feel compelled, for commercial reasons, to agree to the practice the undersigned Associations recommend that the following wording be prominently endorsed on all of the original bills of lading:

> "One original bill of lading retained on board against which bill delivery of cargo may properly be made on instructions received from shippers/Charterers."

The endorsement will give notice to any party purchasing the cargo against an incomplete set of bills of lading, that delivery may be made in exchange for one original bill of lading retained on board, and should therefore reduce the risks of the practice.

When an original bill of lading is carried on board, whether it is the only original or one of a set of originals, the utmost care must be taken by the Master correctly to identify the party to whom the bill of lading should be handed over at destination. Failure to hand the bill of lading to the right party could also result in a claim for misdelivery of the cargo.

POLLUTION CHARTERPARTY CLAUSES

We refer to our Circular of December 1989.

In recent weeks there have been reports of Charterers seeking to impose on Owners very wide-ranging obligations in relation to the eligibility of vessels for trading and the certification and insurance of liabilities for oil pollution. The clauses proposed are particularly directed towards prospective oil pollution legislation in the United States of America, to which we referred in the Circular of December 1989.

One clause which has received publicity recently purports to impose on Owners a warranty that cover for oil pollution liability should be maintained at US$700m for the duration of the Charterparty. The Managers are very concerned that Owners' obligations under such a warranty may well be uninsurable or may be insurable only at unrealistic cost in the future and would caution Members not to accept warranties which commit them to maintaining cover at specific levels beyond the period for which cover is now available. Furthermore it should be made clear that the acceptance of a warranty of insurance cover shall in no way prejudice or affect an Owner's contractual or legal responsibility for oil pollution under TOVALOP or otherwise.

Similarly, Owners should not warrant in Charterparties that they will comply with future unforeseen requirements regarding certificates of financial responsibility for oil pollution. The warning given in the Circular of December 1989 about certification in the United States under the proposed legislation remains valid. A GROUP RECOMMENDED CLAUSE IS SET OUT OVERLEAF.

Representations have been made on behalf of the International Group of P&I Clubs and a statement has recently been issued in Washington in the following terms:

> Quote
>
> Following the meetings held during January in Washington, the Associations in the International Group have consulted with their Boards of shipowner directors with respect to the Group's policy on the issuance of certificates of financial responsibility.
>
> For your information the Group's existing policy on certification which has been followed for many years is that they will only issue certificates required under international legislation and the current Federal Water Pollution Control Act.
>
> On the basis of the consultations by the Associations in the International Group with their Boards of shipowner directors, there is unanimous agreement that the Group could amend its policy on certification to provide certificates which are the equivalent of those required under the 1984 CLC Protocol, although the Protocol is not yet in force, but that no further relaxation of existing policy on certification is appropriate.
>
> The points made by the Group delegation to Washington last January have been reconfirmed and the question of the extent of cover available will have to be considered during the current Policy Year. The Group

remain very concerned at the potential exposure of shipowners above insurable levels.
Unquote

GROUP RECOMMENDED CLAUSE:
FINANCIAL RESPONSIBILITY IN RESPECT OF POLLUTION

1 Owners warrant that throughout the currency of this Charter they will provide the vessel with the following certificates:
   (a) Certificates issued pursuant to the Civil Liability Convention 1969 ("CLC").
   (b) Certificates issued pursuant to Section 311(p) of the U.S. Federal Water Pollution Control Act, as amended (Title 33 U.S. Code, Section 1321(p)).
   (c) Certificates which may be required by U.S. Federal legislation at any time during the currency of this Charter provided always that such legislation incorporates the CLC as amended by the 1984 Protocol thereto or contains provisions equivalent thereto.

2 Notwithstanding anything whether printed or typed herein to the contrary:
   (a) Save as required for compliance with paragraph 1 hereof, Owners shall not be required to establish or maintain financial security or responsibility in respect of oil or other pollution damage to enable the vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this Charter.
   (b) Charterers shall indemnify Owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the cost of any delay incurred by the vessel as a result of any failure by Charterers promptly to give alternative voyage orders) whatsoever and howsoever arising which Owners may sustain by reason of the vessel's inability to perform as aforesaid.
   (c) Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which Charterers and/or the holders of any bill of lading issued pursuant to this Charter may sustain by reason of the vessel's inability to perform as aforesaid.

3 Charterers warrant that the terms of this Clause will be incorporated effectively into any bill of lading issued pursuant to this Charter.

U.S. OIL POLLUTION LEGISLATION CERTIFICATION REQUIREMENTS

Clubs in the International Group have consistently supported the regime for oil pollution liability contained in the 1969 Convention on Civil Liability for Oil Pollution Damage (CLC) and the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IOPC). CLC has been implemented in 66 countries and the IOPC Fund in 41 countries and they have provided a prompt, clearly defined and internationally accepted response to victims of oil pollution damage since they came into force in 1975 and 1978 respectively. Both CLC and IOPC Fund have since been substantially amended by protocols at a Diplomatic Conference which was held in 1984. The USA was prominent at that conference and it is fair to say that the limitation figures for both ships and cargo which were agreed were adopted at the insistence of the USA. These protocols, which have not yet entered into force, have not been ratified by the USA but they do have the support of the current administration.

On several occasions during the last twenty years the Clubs have been asked to provide certificates of financial responsibility in respect of their Members' potential liabilities under Oil Pollution legislation not based on the CLC and Fund Conventions. The Clubs have consistently refused to provide such certificates as to do so would inhibit the general acceptance of the CLC/IOPC Fund regime and lead to administrative chaos (Members are reminded of the 1977 Circular on this subject). The sole exception to this policy of issuing certificates only under CLC was in the USA since its oil pollution legislation entered into force before CLC and was restricted to the reimbursement of Government clean-up costs.

Two draft laws are at present under consideration in the USA, S.686, approved by the Senate in July, and HR1465, approved by the House of Representatives in November. A Conference Committee will be appointed with the aim of providing a consolidated text for adoption in early 1990.

The International Group has already expressed considerable disquiet regarding this proposed legislation in a detailed submission which was made to the U.S. Congress in September. This submission dealt with S.686 and various drafts which were then under consideration by the House of Representatives. Unfortunately HR1465 as adopted by the House of Representatives shares many of the defects of its predecessors. The provisions for limitation, scope of damage, responsibility and control of spills are not well drafted and unlikely to work in a way which is satisfactory for any of the parties involved, including claimants. In addition the drafts appear to be incompatible with the CLC and Fund Conventions.

No decision can be taken regarding the new requirements for Federal Certificates of Financial Responsibility (for both Tankers and Dry Cargo Vessels) until the precise form of the new legislation is clear. However it does

appear that the Clubs' existing policies and reinsurance arrangements will not encompass the new certification procedure. It may not be possible to extend these sufficiently to do so. The provision of U.S. Federal Certification under the new law is therefore doubtful.

The current USCG Certificates remain valid and a further Circular will be issued to Members when the position is clearer.

CARRIAGE OF EDIBLE OILS/PERMITTED PREVIOUS CARGOES

The attention of Members is drawn to problems which have occurred in the United States and Europe with regard to the contamination of edible vegetable oils by traces of previous chemical cargoes. As a result of these problems the American Food and Drug Administration (FDA) have indicated that all vegetable oils which are destined for the United States must be carried in accordance with a Code of Practice drawn up by the National Institute of Oilseed Products (NIOP) relating to the carriage of edible vegetable oil in tanks which have previously contained chemicals or certain petroleum products. The Code of Practice takes the form of cleaning and survey arrangements together with restrictions set out in schedules attached to the Code of Practice which refer to:

1. Prohibited previous cargo list.
2. Acceptable previous cargo lists 1 and 2.
3. A research list relating to cargoes which will be examined for final inclusion in either acceptable or banned lists.

With effect from 1st July 1989 all edible oil cargoes entering into the United States which have been loaded into tanks containing products contained in the banned previous list or the research list will be detained and may be subject to destruction orders.

Copies of these lists are available from the Association.

Members who are offered an edible oil cargo and are in doubt as to whether the previous cargo is acceptable should contact the Association for their advice.

Members' attention is also drawn to the fact that the Federation of Oils, Seeds & Fats Associations Limited (FOSFA), a European based organisation, is introducing similar guidelines for the carriage of vegetable oils to Europe.

A Sub-Committee of the International Group is taking part in discussions with the NIOP and FOSFA with a view to producing guidelines for the carriage of edible oils and a further report will be made to Members in due course.

U.S. ANTIDRUG ABUSE ACT 1986

The Committee has requested the Managers to bring to the attention of the Members the severe level of penalties which can now potentially be imposed upon any Carrier who wittingly or unwittingly permits his vessel to be used in the transportation of illicit drugs into the United States of America. Under the United States Antidrug Abuse Act 1986, a fine in respect of heavily addictive drugs stand at $1,000 per oz. For marijuana or smoking opium the fine stands at $500 per oz. Members will no doubt have seen some of the recent highly publicised potential fines levied against Owners trading into the United States.

Once the fine is imposed, then to avoid or mitigate responsibility, the vessel's interests have to demonstrate that "neither the Owner, the Operator, Master, Pilot nor any other Employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence, could have known that such merchandise was on board." The extent to which a Carrier may be able to demonstrate the exercise of such diligence is to some degree measured by reference to a Sea Carrier Initiative Agreement a specimen of which was publicised by the Managers in the Spring Newsletter. The latest version of the agreement is appended hereto. This revised form offers a recognition by the Customs Authorities that some of the requirements of the Initiative Agreement may be difficult for certain Carriers to comply with. Accordingly the Carrier is only required to agree to implement to the extent possible all terms of the Agreement which are feasible given the circumstances of the Carrier's operation.

A Sea Carrier Initiative Agreement is a voluntary agreement between an individual Carrier and the U.S. Customs Authorities under which the Carrier undertakes to take particular positive steps to secure his vessels against unauthorised use and in particular narcotic trafficking. The preamble to the agreement emphasises that it cannot, by law, exempt the Carrier or General Agent from statutory sanctions in the event that narcotics are discovered, however the extent to which the Carrier has shown compliance with the terms of the Agreement will be favourably used by the Customs Service in arriving at its decision on the disposition of the case.

It is the recommendation of the Association that Members, particularly those who regularly trade to the United States, should give serious consideration to entering into such an Agreement with the U.S. Customs Authorities. Even those Members who do not wish to do so, or who do not regularly trade to the United States, should seek to familiarise themselves with the provisions of the Model Agreement and seek to ensure that their own procedures in no way fall short of the standard which that Agreement envisages.

A number of Shipowning Organisations, such as BIMCO, as well as some National Shipowner Associations, have already entered into Sea Carrier Initiative Agreements with the U.S. Customs Authorities to which their Members can become party by agreeing to subscribe. For those who wish to

negotiate their own agreement, contact should be made with U.S. Customs Authorities in Washington at the following address:

David A. Kahne, Manager,
Carrier Initiative Programme,
Department of the Treasury,
United States Customs Service,
Office of International Affairs,
1301 Constitution Avenue, N.W.
Washington, DC 20229,
Phone: 202 566 9796

To the extent that Members may run into difficulties the Managers are fully prepared to assist. The Managers would like to keep a record of such agreements entered into by Members who are accordingly requested to forward a copy.

The U.S. Customs Service will shortly be publishing a Sea Carrier Security Manual. This should be available in final form over the coming months, and the Managers will be happy to distribute it freely on request.

Members are reminded that cover is given in respect of these fines, unless the Committee decides to refuse recovery in circumstances involving any element of fault or privity on the part of the Member. Should a vessel be detained, the Association will normally attempt to provide security up to the value of the vessel in order to enable its release, but will not be responsible for any losses or operating costs during any period of detention. Cover is also given in respect of confiscation of the vessel. However this is subject to the proviso that the vessel must have been confiscated for a continuous period of 183 days, and for such claims the Committee may again refuse recovery to any extent whatsoever in circumstances regarded by the Committee as involving any element of fault or privity on the part of the Member.

UNITED STATES CUSTOMS SERVICE
SEA CARRIER INITIATIVE AGREEMENT

This voluntary Agreement is made between
(hereafter referred to as "the Carrier") having its principal place of business at _ , and the United States Customs Service (hereafter referred to as "Customs").

Customs urges the implementation of all of the terms of this Agreement, but realises that the unique characteristics of some Carriers' operations might make implementation of some of the terms physically impossible or financially prohibitive. The Carrier agrees to implement, to the extent possible, all terms of this Agreement which are feasible given the circumstances of the Carrier's operations.

This Agreement cannot, by law, exempt the Carrier from statutory sanctions in the event that illegal drugs are discovered by Customs on board the Carrier's vessels. However, the extent to which the Carrier has shown compliance with those terms of this Agreement which are feasible, and establishes to the satisfaction of Customs that only those terms of the Agreement were, in fact,

feasible, will reflect favourably on any Customs' decision or recommendation on final case disposition.

This Agreement between Customs and the Carrier is designed to strengthen the Carrier's ability to deter illegal access to and use of its commercial vessels, their associated equipment, and company facilities, by those engaged in the trafficking of illegal drugs. Customs and the Carrier recognise the need to take positive steps to secure the Carrier's vessels against possible unauthorised use, and in particular, against trafficking in illegal drugs. The following Agreement addresses the concerns of Customs and the Carrier.

The Carrier undertakes:

1. To require, as a matter of company policy, that all of its managers, supervisors, employees and representatives cooperate fully with Customs and other law enforcement entities in implementing the various actions and initiatives growing out of this Agreement, while encouraging the open and on-going exchange of information among all of the entities involved. Each vessel will carry on board the name of the appropriate Customs officer (to be provided by Customs) to contact at each port at which the Carrier's vessels call;
2. To designate, at each port of entry which it serves, the company official or representative who will assist Customs with searches of the Carrier's vessels at that port, and who will be readily accessible for contact on all matters identified as of enforcement interest to Customs;
3. To designate, for each vessel, the ship's officer who will be available to assist Customs in searches of that vessel, and in gaining access to all compartment and spaces;
4. In accordance with all applicable laws, upon request to provide to Customs identifying data provided by current employees and applicants for employment where there is a need for such information;
5. To provide as far in advance as possible copies of the inward foreign manifest for each of its vessels, noting any first-time shippers, and to notify Customs immediately of any suspicious circumstances surrounding cargo shipments;
6. To promptly notify Customs of major structural repairs, remodelling, or reconfiguration of vessels' interiors;
7. As soon as such information is available, to provide Customs with a list of all United States ports at which the Carrier's vessels are expected to call during the upcoming year;
8. To develop and implement a security system acceptable to Customs, under which the Carrier will:
    a. Take all reasonable measures to enhance security and control procedures in order to make it more difficult for unauthorised persons to gain access to vessels, both overseas and in the United States;
    b. Permit only persons displaying proper identification access to vessels, and only when required by their duties. A security system acceptable to Customs will be developed and implemented by the Carrier. The system will address the threat of the illegal drugs smuggler;

c. Regularly search vessels for illegal drugs and contraband prior to departure for, and en route to, the United States, and shall, upon arrival, report to Customs all instances where illegal drugs or contraband have been found. Any illegal drugs or contraband located during vessel searches shall be secured with minimal handling and preserved for appropriate follow-up action by Customs;
d. Lock or seal specific compartments aboard ships which may be used to conceal illegal drugs where such locking will not interfere with normal vessel operation or pose a possible safety hazard;
e. For those areas which cannot be sealed or locked, limit access to those persons with legitimate business in such areas;
f. Notify Customs of broken seals or locks, and of unauthorised crew members found in restricted areas.

9. In the event that vessels operated by the Carrier are not owned by or under the management or control of the Carrier, make every effort to see that vessel owners agree to the terms of this Carrier Initiative Agreement.

The U.S. Customs Service will:

1. Hold discussions with the Carrier regarding joint security surveys at selected United States and foreign locations;
2. Review security systems developed by the Carrier in accordance with Paragraph 8 of this Agreement;
3. Provide training to certain of the Carrier's personnel in search methods, enforcement awareness, security measures, and in recognition of situations of enforcement interest to Customs;
4. Make every effort to coordinate with Carrier management the release to the press or the public of information which may involve the Carrier's interests.

This Agreement, once fully implemented, will act as a deterrent to those persons who may utilise the Carrier's vessels as a means of smuggling illegal drugs.

The listed elements reflect the mutual understanding of the Carrier and Customs of what is expected of each.

This document, once jointly endorsed, will serve as a working agreement to be utilized at each United States port of entry served by the Carrier.

.....	.....
Assistant Commissioner Office of International Affairs United States Customs Service	(Title and firm)
Dated:	Dated:

INSURED VALUES

The Committee have instructed the Managers to remind Members of the Circular issued in November 1974 (5:026). This Circular pointed out the requirement that for P&I purposes, in particular Collision and General Average, every entered ship shall be deemed to be insured "for her full value" under standard Hull and Machinery Policies, including the Running Down Clause. Since this Circular was issued, the Rules have been rewritten and attention is therefore drawn to Rule 11.1 reading: "Every entered ship shall be deemed to be insured throughout her period of entry by the usual form of Lloyds Policy with the Institute Time Clauses Hulls including the Three-Fourths Collision Liability Clause attached, or by other equally wide insurances (which may include Excess Liability Policies), for such value as the Committee in its sole discretion may determine as representing at the relevant time her full market value, free of commitment."

The Committee, in considering claims for ships' proportion of General Average special charges or salvage not recoverable under Hull Policies for reasons of under insurance and for excess collision liabilities, expect that Members will have reviewed their insured values at regular intervals more frequently than the annual renewal of those policies. How frequently depends on how ship values are reacting at any particular time and therefore no specific period can be laid down.

GRAIN SHIPMENTS TO THE USSR

As Members may be aware, a substantial number of claims have been made arising from shipment of bulk grain on "FULL OUTTURN GUARANTEE" basis to various ports in the USSR. Under these sales the Soviet Receivers pay the Exporting Shippers for the quantity they receive at Soviet ports, rather than the quantity indicated in the bill of lading as is usual. The International Survey firm SGS have been retained by Cargo Interests to monitor the amount of cargo loaded and have guaranteed a full outturn at Soviet ports. They have insured their liabilities so incurred with various Underwriters in France. Over the past few years there have been many cases where outturn in Soviet ports has proved to be less than the bill of lading quantity, giving rise to subrogated claims by the French Underwriters against the carrying ships. It is anticipated that the USSR may be importing a larger quantity of grain in 1987 than in the past few years, resulting in an increase in this type of claim.

The Managers recommend Members to take all suitable steps to defeat such claims. At the load port Members should ensure that the hatches are sealed on completion of loading, records kept of the seal numbers and if possible verification of the amount of cargo loaded should be checked by a draft survey. Some or all of these steps may in any event be taken by surveyors acting for shippers under the "FULL OUTTURN GUARANTEE" outlined above. The Committee has decided that the cost of these precautions are to be regarded as normal operating expenses.

At discharge ports Members are recommended to ensure that the seals are intact before discharge commences and to obtain an Empty Hold Certificate confirming that all cargo has been discharged from the Soviet Receivers. A pre-discharge draft survey may also prove useful.

ENTRY OF VESSELS IN CLASS 8

The current practice relating to entries of vessels in Class 8 of the Association is that a Member can enter a new vessel in the Class either at the time that the vessel's keel is laid or on delivery of the vessel. In the former instance, the Member has cover for any disputes that may arise with the builders under the Contract but in the latter instance, as the cover only starts on delivery, such building disputes are not covered.

Members who acquire a second-hand vessel can enter her when they become the Owners and any disputes arising out of the negotiation for the purchase of the vessel would not be a matter involving the Class but if defects subsequently manifest themselves, for which it would seem the sellers should be liable, then the costs of these disputes are covered. Vessels are also entered by Charterers under the guidelines laid down between the Association and the Managers i.e. the Charterers' entries are only accepted where the Charterer is also a shipowning Member of the Association, with a few exceptions where the Charterers are very long-standing Members of the Association and have been so prior to that particular guideline being adopted.

The Managers have been approached to widen the cover available for Owners acquiring second-hand vessels and chartering vessels in, somewhat analogous to that available to Members acquiring a new vessel and entering it at the time of keel laying. The Managers are pleased to advise that the Committee have authorised the Managers to accept entries in this Class at the time that a Memorandum of Agreement to purchase a second-hand vessel is signed or when a pro forma agreement is reached to charter a vessel.

WAR RISKS P&I COVER

Under the Rules effective from Noon G.M.T. 20th February 1987, the Committee has decided that cover which would otherwise be excluded as War Risks under Rule 14 of Class 5 shall be generally available to all Members at no extra premium, but subject to the following constraints:

(a) This cover will be limited to US$50m any one accident, each ship;

(b) The Committee may from time to time designate Aprohibited areas≅ which will be notified to Members and the cover will not thereafter be available in respect of casualties occurring whilst ships are actually within any such area;

(c) The Committee has determined that the following shall immediately be so designated as a "prohibited area" viz: the area bounded by a line from 29o 23.5'N 48o24.5'E running 104.5oT to 29o11.25'N 49o17.5'E running 151oT to 28o23'N 49o 47'E running 90oT to 28o23'N 51o09'E;

(d) The cover is subject to the Institute Notice of Cancellation and War Automatic Termination of Cover Clause (to which the reinsurance referred to below is also subject) allowing for cancellation on seven days notice, and the cover will automatically terminate upon the detonation of a nuclear device or upon the outbreak of war between any of the major powers or upon requisition of the ship concerned.

The ability to offer this extension of cover is based on reinsurance taken up by the Association, but this in turn is on the basis that Members will continue to carry their own customary War Risks insurance for their ships i.e. the cover now being made available will be applied to any shortfall which may result from the normal P&I extension to such cover being limited to the insured value of the ship concerned, or in some other way. If Members are in any doubt as to how they should view the operation of this extended cover, in relation to their normal arrangements, they should contact the Managers.

The Committee will keep under review how far it may be possible to continue to provide this extension of cover to all Members without any specific, additional premium.

THE INTERNATIONAL GROUP AGREEMENT 1985

We refer to our Circular dated 13th August 1984 discussing modification of the International Group Agreement which was also mentioned in Newsletter Edition 3 dated July 1985 and in the 1985 Managers' Review.

We can now inform you that the European Communities Commission has issued a formal decision dated 26th October 1985 approving the IGA 1985 for 10 years from 20th February 1985.

The decision of the European Communities Commission draws attention to the need to ensure that the Clubs observe the requirements of the so-called "pre-30th September procedure" and requires them to report annually to the Commission on the operation of this procedure which was explained in our above Circular.

Any Member who wishes to have a copy of the IGA 1985 or would like any further information about it should apply to the Managers.

CONFIRMATION OF SHIP'S AGE

Over recent months Associations in the International Group have been receiving an increasing number of requests from Members to issue on their behalf, either directly or through correspondents, certificates confirming the age of individual ships. It appears that many of these requests originate from Charterers or shippers selling cargo to certain countries in the Middle East because payment under letters of credit are conditional upon such a certificate being produced by the Shipowner's P&I Association. Similar problems arise with cargoes insured in India.

In some cases confirmation is also required that no Calls are outstanding. There have been at least two instances where Members have agreed Charterparty clauses obliging them to produce from their P&I Association a statement to the effect that not only are Calls fully paid but that they will remain so throughout the voyage in question.

Although in the past the Managers have attempted, where possible, to help those Members making requests for these certificates it will be appreciated that the Association is not in a position to make positive statements regarding the age of a ship. It is undesirable to disclose to third parties information regarding the financial standing of a Member with his Club and clearly no guarantee can be given with regard to future Calls.

For these reasons Members are advised that certificates relating to age or the Calls' position of a given ship will not in future be issued on behalf of the Associations in the International Group and Members should warn their Charterers and shippers accordingly. In particular Members should be careful not to enter into any such commitment when negotiating Charterparty terms.

NEW YORK PRODUCE EXCHANGE TIME CHARTER - INTER-CLUB AGREEMENT

This Agreement was first formulated in 1971 in response to numerous disputes regarding liability for cargo claims. The provisions of the New York Produce Exchange form of Charterparty are not clear on the apportionment of liability for cargo claims. The Agreement, which has been refined from time to time, sets out guidelines for the apportionment of cargo claims between Owners and Charterers. All Clubs in the International Group are signatories to the Agreement and have undertaken to recommend its use to Members.

It is now not unusual for the Inter-Club Agreement to be expressly incorporated by an additional clause into the New York Produce Exchange form of Charterparty. Recently effect of the so-called Inter-Club Agreement was tested before the High Court and subsequently before the Court of Appeal in England. The point at issue was the time limit applicable to claims brought by Charterers against Owners. Since the NYPE printed form includes a Clause Paramount incorporating the United States Carriage of Goods by Sea Act 1936 it was generally assumed that claims brought by Charterers against Owners were subject to a one year time limit. The Court of Appeal ruled that although the Inter-Club Agreement is itself silent on time limits its express incorporation into the Charterparty negated the 12 month time limit and would not apply to claims falling within the scope of the Agreement. The effect of this decision which is not being appealed further is that in England the time limit for either party to the Charter to bring cargo claims against the other is 6 years. New York Arbitrators have also held that claims of this nature are not subject to the one year time limit on the grounds that they are a claim for an indemnity and so fall outside the scope of the 1936 Act.

The Clubs in the International Group think it appropriate that the Agreement should contain a time limit shorter than 6 years, and it has been decided to amend the Agreement by specifying a period of 2 years from the date of discharge in which either the Owner or the Charterers, as appropriate, must give notice of any claim to the other advising the bill of lading details and the nature and amount of the claim failing which any recovery will be time-barred. Where the Inter-Club Agreement is incorporated into a Charterparty it is recommended that the incorporating clause makes specific reference to the "Inter-Club New York Produce Exchange Agreement (as amended May 1984)". Except for the incorporation of a time limit the other recommendations for apportionment of cargo claims in the Agreement remain unchanged.

MODIFICATION OF THE INTERNATIONAL GROUP AGREEMENT

The International Group Agreement ("IGA") (details of which are to be found as pages 2, 5 and 7 of Newsletter Edition No.1 dated November 1982) has, since December 1981, laid down the procedure to be followed by Clubs in the International Group when quoting for vessels already insured within the Group and for additions to fleets that are so insured. Because the IGA imposed certain restrictions, application was made to the E.C. Commission for clearance under Community law.

Following negotiations with the Commission, the International Group has agreed to make certain changes in the IGA. A new Agreement ("IGA 1984") has been formally notified to the Commission and came into force on 31st July 1984. It includes the following provisions:

(a) Under the original IGA the holding Club's rate for renewal could never be under-cut unless it was unreasonably high. Under IGA 1984 a new Club may charge a lower rate, provided that it is not unreasonably low and that the Club and the Member enter into a binding written commitment by 30th September preceding the renewal date. (The agreed rate must be adjusted prior to the renewal date to reflect any general change in the new Club's renewal rates, Pool retention limits and Group reinsurance costs.) In the absence of a pre-30th September commitment, the holding Club's rate cannot be under-cut unless it is unreasonably high.

(b) There are parallel provisions relating to new vessels. Subject to the holding Club's rate being reasonable, it may not be under-cut, except by a Club with which a pre-30th September commitment exists for an operator's existing fleet (or, if the fleet is split, for all vessels entered with a single Club). Any lower rate offered must not be unreasonably low. If the fleet is split between two or more holding Clubs, each may quote for a new vessel without reference to the other(s).

(c) The previous scale of minimum rates for tankers is abolished, and replaced by a requirement that tanker rates must make reasonable provision for claims within the Club's retention, Pool claims and reinsurance and administrative costs. Clubs will exchange information about tanker claims and will recommend a reasonable minimum provision to be made for Pool claims.

(d) A provision has been added whereby a Member who transfers a vessel to another Club may provide a bank guarantee in lieu of paying a Release Call. He may require confirmation that the Call is in accordance with a rate of formula fixed by the Directors of the holding Club. If not, he may challenge the reasonableness of the Call.

(e) The constitution of the Committee (which has power to adjudicate on rates and on certain other questions for the purposes of the agreement) has been altered to include in every case at least one Member who is not a director, manager or employee of any Club, and has not previously been a director, manager or employee of a Club involved in the dispute.

The provisions relating to new vessels do not match the proposals of the E.C. Commission, with which the Group found itself unable to comply. This has led the Commission to issue, on 12th July 1984, a formal Statement of Objections to the IGA in its original form, to which the Group will shortly reply. The case will then go to a formal hearing before an official of the Commission, probably towards the end of this year.

Members will be informed of the progress of the case.

LIBYA - DOCUMENTS IN ARABIC LANGUAGE

The Libyan Authorities have announced that as from 7th June 1984 all ships discharging/calling at Libyan ports must submit all ships documents and certificates, cargo documents and crew documents in the Arabic language before being permitted to berth. It is understood that this will include class and load line certificates but would not appear to include bills of lading.

All Members trading or about to trade to Libya are urged to contact their agents there immediately to obtain precise details of the requirements or the Managers who are continuing to monitor the situation.

CERTIFICATES OF INSURANCE FOR POLLUTION LIABILITY - ALASKA/USA

Members are reminded of previous Circulars on this subject, and in particular the Group Circular of September 1977 entitled "Charterparty Pollution Clause", which have emphasised that the undersigned Associations are able to provide only two certificates of insurance for pollution liability, one required internationally under the 1969 Civil Liability Convention and the other under the earlier United States (Federal) requirements. Regrettably further certification to comply with any requirements of individual Governments or States for evidence of financial responsibility for pollution liability is impossible.

Alaskan State law requires Owners of tankers trading to the State, other than those loading Trans-Alaska Pipeline oil, to provide before entering Alaskan waters evidence of financial responsibility in the amount of $20m to cover potential oil pollution liabilities. This is in addition to, and quite separate from, normal Federal requirements for certification applicable to all ships trading to the United States.

Tankers trading to Alaska normally do so under charter to a major oil company and in the past the Charterers have been content to provide the necessary $20m security to the State of Alaska, against an indemnity from the Owners concerned backed by confirmation from the Owners' P&I Club that the ship is entered and covered for pollution risks. Recently, however, a tanker ran aground in Alaskan waters causing some pollution, neither Owners nor Charterers had made any arrangements in advance to comply with the required certification procedures and very substantial difficulties arose as a result.

Members are therefore again warned to ensure that proper enquiries are made as to the requirements of individual States before trading there, and in particular Alaska where, in addition to the need to provide evidence of financial responsibility for oil pollution, other State regulations governing the handling of oil cargoes are in force.

It is therefore recommended that the following Charterparty Pollution Clause (as now revised) should be used in all cases:

> AOwners by production of a Certificate of Insurance or otherwise shall satisfy the requirements of:
>
> (a) Section 311(p) of the United States Federal Water Pollution Control Act, as amended through 1978 (33 U.S. Code section 1321(p)); and
>
> (b) Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1969, as far as applicable.
>
> Save as aforesaid, Owners should not be required by Charterers to establish or maintain financial security or responsibility in respect of oil or other pollution damage to enable the vessel in performance of this Charter lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory, or while there to engage in any oil transfer operation.≅

Members who require further information should consult their P&I Club.

BILLS OF LADING: DELIVERY OF CARGO

(A) Delivery of cargo without production of bills of lading: standard form of letter of indemnity

As pointed out in a previous Group Circular in March 1979, liability arising from the delivery of cargo without production of the bills of lading is not recoverable under the Rules of the Group Associations unless the Committee in their discretion so decide. However, it is thought that it might be helpful to Members who nevertheless decide for commercial reasons to make such delivery but seek to protect their own position, if all parties concerned came to recognise a standard form of letter of indemnity which might be treated as immediately acceptable to banks or others providing the necessary financial counter-security. For that purpose the undersigned Associations therefore recommend general use of the wording attached, further copies of which are available on request. In cases where those giving the letter of indemnity require that a limit be placed on their liability thereunder, it is recommended that the limit be not less than 150% of the c.i.f. value of the relevant cargo.

(B) Retention of one original bill of lading on board

Many Members will be aware that there has recently been a revival in certain trades of the old practice of the shipper or Charterer entrusting the Master with one of a set of three original bills of lading, addressed to the party to whom he should give delivery of the cargo in exchange for that same bill. This has occurred where the sea voyage is very short (although non-negotiable receipts have customarily been used in short sea trades to avoid this problem) or where, as with oil cargoes, there are likely to be many intervening transactions involving negotiation of the bills of lading between the various buyers and sellers of the cargo through their banks.

The simplicity of this arrangement has many attractions, but, as has recently been pointed out by the Comite Maritime International, it exposes the Shipowner to serious risks. In some jurisdictions the Courts may award damages to an innocent holder of a negotiated bill of lading if it appears that the cargo has already been delivered to someone else with the Acomplicity≅ of the Master.

In the long term the problem may be solved by international acceptance of the recent recommendation of the Comite Maritime International that the issue of bills of lading in sets of three originals should cease. Meanwhile Members may be asked to comply with the risky practice described above. The undersigned Associations recommend their Members to resist such requests whenever possible.

But on some occasions Members may feel compelled, for commercial reasons, to agree to this practice. As indorsees and banks are prepared to accept an inevitable result of it, namely the negotiation of defective sets of bills of lading (defective because the sets are short of the one original that is on board the ship), then there should be no objection from these parties to the two original bills of lading actually given to the shipper being endorsed as follows:

"One original bill of lading retained on board against which delivery of cargo may properly be made on instructions received from shippers/ Charterers."

The undersigned Associations therefore advise Members who decide that they must accept this practice that they should at least reduce its risks by insisting on the above wording being prominently endorsed by the Master on all bills of lading given to the shipper. The Master should also be told to follow with the utmost care whatever instructions are given to him by the shipper to identify the party to whom the bill of lading carried on board should be handed over at destination. Legal advice should be obtained if subsequently any differing instructions are given to the Master.

STANDARD FORM OF UNDERTAKING TO BE GIVEN BY CARGO OWNERS IN RETURN FOR DELIVERING CARGO WITHOUT PRODUCTION OF THE BILLS OF LADING

To:

.....

the Owners of the S.S./M.V. .....

Dear Sirs,

S.S./M.V.....

Goods:

No:.....

Description:.....

Marks:.....

The above goods were shipped on the above vessel by Messrs.....

[and consigned to us]* but the relevant bills of lading have not yet arrived.

We hereby request you to deliver such goods to .....[us]* without production of the bills of lading.

In consideration of your complying with our above request we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss or damage of whatsoever nature which you may sustain by reason of delivering the goods to .....[us]* in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the goods as aforesaid to provide you or them from time to time with sufficient funds to defend the same.
3. If the ship or any other ship or property belonging to you should be arrested or detained or if the arrest or detention thereof should be threatened, to provide such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property and to indemnify you in respect of any loss, damage or expenses caused by such arrest or detention whether or not the same may be justified.
4. As soon as all original bills of lading for the above goods shall have arrived and/or come into our possession, to produce and deliver the same to you whereupon our liability hereunder shall cease.
5. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
6. This indemnity shall be construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully,

For and on behalf of

. . . . . .

For and on behalf of

. . . . . .

Bankers

*Delete if inapplicable

DIRECT REDUCED IRON

We refer to our Circulars of September 1980 and August 1981. The carriage of direct reduced iron was considered again in January this year at the 23rd session of the IMCO (now International Maritime Organisation) Sub-Committee on Containers and Cargoes to which the undersigned Associations presented a paper. A working group set up at that session recommended certain amendments to the entry for direct reduced iron in the IMO Bulk Cargo Code and its recommendations have subsequently been ratified by the IMO Maritime Safety Committee.

The amendments concern only direct reduced iron pellets, lumps and cold moulded briquettes and no amendment has been made to the entry for hot moulded briquettes, the second category mentioned in our Circular of August 1981.

The IMO amendments to the entry for direct reduced iron pellets, lumps and cold moulded briquettes relate mainly to the "Shippers Requirements" which now read as follows:

"A. Shipper should provide necessary specific instructions for carriage, either:

(1) Maintenance throughout the voyage of cargo holds under an inert atmosphere containing less than 5% oxygen. The hydrogen content of the atmosphere should be maintained at less than 1% by volume; or

(2) That the DRI has been manufactured or treated with an oxidation and corrosion inhibiting process which has been proved to the satisfaction of the Competent Authority, to provide effective protection against dangerous reaction with sea water or air under shipping conditions.

B. The provisions of paragraph A may be waived or varied if agreed by the Competent Authorities of the countries concerned taking into account the sheltered nature, length, duration, or any other applicable conditions of any specific voyage."

In relation to paragraph A(2), the major manufacturers in Germany have used a chemical Apassivation≅ process to inhibit oxidation/corrosion. However, there has recently been a serious fire on board a ship carrying this product and there must be serious doubts about whether such a passivation process renders the cargo safe for carriage by sea.

The undersigned Associations continue to believe that the only proven method of carrying this cargo safely is by maintaining the cargo holds in an inert atmosphere and believe that the most effective method of providing an inert atmosphere is by injecting the inert gas at the bottom of the stow in order to force out the air within the stow; therefore, the detailed advice to Shipowners and Masters on pages 2 and 3 of the Circular of August 1981 stands.

On present information, it is not thought that the length or nature of the voyage contemplated (IMO paragraph B) can ever justify the waiver of the requirement of maintaining the cargo in an inert atmosphere.

While the undersigned Associations continue to work closely with the major manufacturers and international bodies to reach agreement for the further amendment of the regulations, Members are again advised to ensure that the terms of their Charterparties permit the carriage of direct reduced iron pellets, lumps and cold moulded briquettes in accordance with the recommendation that the cargo should always be carried in an inert atmosphere whatever the nature or length of the voyage contemplated.

For the guidance of Members, we set out below a list of those countries now known to be exporting direct reduced iron:

Country	Product	Comments
Canada	Pellets	Shipped in inert CO^2 atmosphere.
Indonesia	Pellets	Shipped under inert CO^2 atmosphere.
Mexico	Pellets	Shipped under inert CO^2 atmosphere. (N.B. It should be noted that shippers in Indonesia and Mexico inject CO^2 into the hold over the top of the cargo. It is not considered that this is as effective a method as that used by the shippers in Canada who inject the CO^2 at the bottom of the stow in order to force out the air within the stow.)
Germany	Pellets	Passivated but recently serious fire broke out in a cargo of the passivated product.
Trinidad	Pellets	Neither passivated nor inerted.
Nigeria	Pellets	Manufacturing plant not yet operating but believed that pellets will be neither passivated nor inerted.
Venezuela	Briquettes	See category 2 of our Circular of August 1981.

CARRIAGE OF COAL FROM U.S. GULF PORTS

Members will be aware of the considerable growth in the export of coal from the USA and, in particular, from the U.S. Gulf Ports. Ships have experienced difficulties with coal from U.S. Gulf Ports where serious heating of the cargo has occurred at the time of shipment and, in some cases, serious heating has taken place on the voyage necessitating the discharge of cargo at a port of refuge. It is, therefore, suggested that where possible Members should obtain details of the cargo to be shipped to establish in consultation with the shipper that the cargo is safe for carriage. If necessary, the Association's correspondents can be asked to appoint surveyors on behalf of the Member to establish whether or not the coal to be loaded is either heating or contains temperatures in excess of 105oF. If the cargo is found to be heating or has temperatures above 105oF then further expert guidance should be sought prior to loading.

Potential problems in the carriage of this cargo may be avoided by adhering to the following suggestions:

1. The Master should ensure that openings which provide ventilation to the lower parts of the cargo spaces are blanked off before loading commences.
2. Prior to loading the bilge pump system should be checked and the bilge wells examined to confirm that they are free of water and waste material.
3. During loading the Master should ensure that the cargo is not stowed adjacent to hot areas.
4. At the completion of loading, the cargo should be trimmed as level as is reasonably practicable to facilitate surface ventilation for the dispersal of dangerous gases that may be produced and to reduce the risk of the cargo shifting during the voyage.
5. On the completion of loading, the ship's bilges should be pumped dry and a sample of the bilge water retained on board. On completion of discharge, the holds and bilge lines should be inspected and if abnormal corrosion is present a surveyor should be called in immediately.
6. Should the Master have reason to suspect that heating or spontaneous combustion are occurring during the voyage he should:
   (A) Ensure that the cargo compartment in which over-heating is suspected is completely closed until the intended port of discharge or, if necessary, a port of refuge is reached.
   (B) Apply carbon dioxide, inert gas or high expansion foam into the hold, if any of these are available but water or steam should not be applied directly to burning coal.
   (C) If necessary, use water to cool the boundaries of adjacent cargo spaces.
   (D) Obtain expert advice.
7. The attention of Members is drawn to the recommendations given in Appendix B of the IMCO Code of Safe Practice for Solid Bulk Cargoes (1980 Edition) and any further amendments thereto and, where appropriate, the British Merchant Shipping Notices Nos. M970, M971 and M972.

U.S. EAST COAST COAL CARGOES

Many Members are probably already aware of the serious problems which have on occasions been experienced with these cargoes, since the very considerable increase in the volume of the traffic.

A detailed study by technical experts is being made, whose conclusions will be circulated as soon as possible. Meantime however there is no doubt that variations in the quality of the cargo loaded, and its preloading condition (particularly excessive moisture content and high temperatures), can give rise to chemical reactions during the course of ordinary sea carriage which, if not actually resulting in spontaneous combustion, can cause serious corrosion damage to the ship's holds.

Although many such cargoes will prove to be entirely safe, there may be Members who would nonetheless always want their Masters to have the assistance of specialist surveyors to sample and examine what is being loaded. Arrangements for this purpose can be made through the New York or New Orleans offices of Lamorte Burns, but the cost will have to be for the Member's own account as part of the cost of this particular traffic.

DAMAGE TO CARGO DUE TO LEAKAGE THROUGH STEEL HATCH COVERS

It is becoming apparent that the incidence of cargo damage as a result of leakage through steel hatch covers is increasing. This damage tends to occur to bulk cargoes carried on voyages where heavy weather is encountered. Examples are voyages undertaken across the Pacific with grain from the United States in December, January and February.

There is seldom, if ever, any reason for leakage, other than some sort of human failure to properly tend to the hatches themselves. This failure manifests itself in two basic forms. Firstly, the failure to maintain the gaskets which ensure water-tightness and secondly, the failure to properly secure the hatches after the vessel has loaded and is ready to sail.

The Managers feel that Members should circularise their crews, reminding them of the importance of using their best endeavour to ensure the water-tightness of the hatches. It is suggested that those on board should go through a standard routine of checking the hatches, both prior to loading and after closing them and record this so that it would be available in the event that cargo damage is found. There will be occasions when there is a leakage despite all reasonable precautions having been taken. So long as it is possible to show that proper precautions have been taken, the Shipowners should then be able to develop a defence.

Before cargo is loaded, the packing on the undersides of the panels and the compression bar which ensures close contact with the packing should be examined. It is often assumed that only the packing ensures the water-tightness of the hatch but this is not so. Damage or distortion of either the packing or the compression bar can cause gaps and therefore leakages. Both should be carefully examined. It should be borne in mind that inserting fresh pieces of packing rather than renewing the whole run is often ineffective.

There is provision in the coamings for moisture to be collected and drain away rather than overflow into the cargo compartment. All waterways and drain holes should be cleared and any residues of cargo removed so that condensation etc. can drain away safely.

When the hatch is closed, it must be secured properly. Once the hatch is taken off its wheels it must be secured and the joints put under an even pressure, in which respect all moving parts, such as the nuts on the tensioning clips, must be kept free moving and greased. All the steel cleats and wedges must be properly fitted and secured and checked. Needless to say, these should be examined throughout the course of the voyage and particularly after any periods of heavy weather to ensure that there has been no movement or any of the wedges loosened. All the foregoing precautions should be recorded in the log book and any additional maintenance measures on hatches. This will represent valuable evidence in the event of cargo damage being found when the vessel reaches her port of discharge.

To many Owners these may seem obvious and unnecessary observations but the Managers feel Members may deem it advisable to remind their seagoing staff that particular care must be exercised to secure hatches after completion of loading and generally take precautions regarding their water-tightness.

DIRECT REDUCED IRON

We refer to our Circular of September 1980 (5:085) concerning Direct Reduced Iron Pellets, following which the undersigned Associations presented a paper for consideration by the IMCO Bulk Cargo Sub-Committee on Containers and Cargoes.

In January, the sub-committee considered the problems of the safe carriage of direct reduced iron in bulk. With the aid of a technical panel draft regulations for the Bulk Cargo Code were drawn up and we attach a copy of that draft. This draft is still the subject of considerable discussion within IMCO but, in the meantime, the undersigned Associations recommend that it be followed.

The proposed regulations set out in general and brief terms the hazards involved and some precautions which should be taken. An important aspect is that direct reduced iron has been divided into two main types:

(i) Category 1 comprises pellets, lumps and cold moulded briquettes.

(ii) Category 2 comprises hot moulded briquettes.

Reference to the draft code regulations suggests that vessels carrying cargo in Category 1 will need significant structural modification to permit efficient inerting of the cargo spaces.

On the basis of current information, Category 2 cargo has less tendency to react dangerously with water and inerting is not considered necessary.

The proposed regulations are intended as an interim measure only and the undersigned Associations will be participating in further research to improve and amend the regulations as necessary. In the meantime, the following notes are intended as advice to Shipowners and Masters to supplement the requirements of the proposed regulations.

Since IMCO has not yet finally endorsed these regulations, Members intending to allow the carriage of direct reduced iron should ensure that the terms of their Charterparties permit its carriage in accordance with these specific draft regulations and notes.

CATEGORY 1: Pellets, lumps and cold moulded briquettes.

(a) It should be noted that certificates are required at the time of shipment from both the shipper and a "competent person". The Master should be assured by the "competent person" that, in certifying the stability and suitability of the cargo for shipment, he has had specific regard to the period and conditions of storage of the cargo before loading, and its temperature.

(b) The ship should be equipped with systems for continuous monitoring of the temperature, and of oxygen and hydrogen concentrations during the voyage.

(c) Only certified safe electrical equipment and associated wiring should be installed in any cargo space or adjacent closed spaces or deck houses

where flammable gases may accumulate. In such spaces through runs of cable should be suitably mechanically protected, have no joints and be of a type approved in oil tankers or be enclosed in heavy gauge screen steel conduits.

(d) The temperature of the cargo should be monitored during loading and, if more than 10oC above ambient temperature, the Master should call for the assistance of the local P&I correspondent and the "competent person" providing the certificate of suitability for shipment. During loading or discharging no smoking, burning, cutting, chipping or other source of ignition should be allowed in the vicinity of the holds. Movable cargo lights, if used, must be not less than 10ft (3 metres) from the coaming in a position where they are not likely to be broken during operations, and not over the square of the hatch. As far as is reasonably practical the direct reduced iron should not be dropped from a height into the hold.

(e) During loading the direct reduced iron must either be protected from exposure to rain or snow or else loading should be stopped and hatches covered. Direct reduced iron which has been exposed to wetting on an open conveyor or elsewhere should be rejected.

(f) The ship should be fitted with means of introducing inert gas immediately after completion of loading and be capable of maintaining an inert atmosphere during the voyage. The preferred inert gas is nitrogen, but if this is not obtainable carbon dioxide may be used.

(g) Piping should be arranged so that the inert gas may be put in at the bottom of the stow at several points in the hold so as to force out effectively the air within the stow.

(h) The amount of inert gas put in should be such as to keep the oxygen concentration below 5% by volume.

(i) If water enters the hold hydrogen is likely to be evolved with the development of heat. The effect of condensation on the cargo may have similar results. The heat may be sufficient to cause ignition. For this reason every precaution should be taken to exclude water. Particular attention should be paid to bilges, adjacent ballast tanks and the watertightness of the hatches and other openings on the weather deck. Inspection of these openings should be made regularly throughout the voyage, particularly after heavy weather, and any defects be remedied.

(j) On completion of loading and closing of hatches, the hatches should be sealed by tape or composition. Then inert gas should be put in in accordance with (f) to (h) above. This may conveniently be done from a shore-based supply, thereby reducing the on-board capacity required. It should be noted that the on-board supply required for topping up must be additional to the ship's carbon dioxide system if installed.

(k) Hydrogen gas is liable to escape even through small openings. Care should be taken to guard against its possible accumulation in adjacent

enclosed spaces. The ship should carry a suitable portable meter for measuring hydrogen concentrations.

(l) During the voyage monitoring of the oxygen concentration will indicate whether air has entered the hold and whether more inert gas is required to maintain the oxygen concentration below 5% by volume. If monitoring shows a continuing increase in hydrogen and/or rise in temperature a fire situation may be developing.

(m) If a fire situation develops the ship should make for the nearest suitable port and neither water, steam or additional carbon dioxide should be used at this stage to counteract the fire as a reaction with the cargo may result. If, however, nitrogen gas is available the use of this gas to keep the oxygen concentration down will contain the fire.

(n) Should heavy weather severely damage the hatches so that they cannot be repaired and water enters the hold a fire situation is likely to develop. The ship should make for the nearest suitable port and seek assistance.

(o) Entering the hold without breathing apparatus must be prohibited at any time unless the hatch covers are completely open and the hold effectively ventilated. If entry of the hold with breathing apparatus is required, this should only be done with full back-up assistance.

(p) If hydrogen is developing opening of hatches may result in a spark induced fire or explosion. In such circumstances hatches should not be opened without expert advice which may be obtained through the local P&I correspondents.

(q) During discharge the direct reduced iron should be kept dry.

(r) Any dust accumulated on decks or elsewhere during loading or discharge should be washed off as soon as possible to prevent adhesion.

CATEGORY 2: Hot moulded briquettes.

(a) The Master should adopt the same procedures as in Category 1 in relation to:
   (i) certification by a "competent person"
   (ii) the condition of electrical wiring and equipment in the hold
   (iii) the exclusion of water from the hold
   (iv) the exclusion of sources of ignition during loading and discharge
   (v) the possible accumulation of hydrogen in adjacent spaces.

(b) The main hazard arises from the evolution of hydrogen if water enters the stow. For this reason, effective ventilation should be carried out whenever possible. The equipment used for forced ventilation should be such as to avoid the possibility of ignition of gas/air mixtures.

(c) Prior to loading the briquettes may have been stored uncovered, exposed to rain. This is not necessarily objectionable provided that the cargo is not obviously wet at the time of loading. However, loading should cease during periods of rain and the holds be covered.

(d) The Master should be assured by the "competent person" that all practical steps have been taken to ensure that the cargo delivered to the ship does not contain more than 5% fines. As far as is practical dropping from a height into the hold should be avoided to prevent disintegration of the briquettes.

(e) On completion of loading and prior to sailing if weather and circumstances permit, the hold should be left open as long as possible to allow the dissipation of any hydrogen evolved.

(f) The temperature of the stow should be taken. If it is in excess of 65oC (150oF) sailing should be postponed until it is clear that it is falling. If it continues to rise, the Master should call for the assistance of the local P&I correspondent.

(g) Should the Master suspect a serious abnormality in the temperature of the cargo during the voyage he should make for a port of refuge and seek assistance. Ventilation should continue in the meantime.

(h) Any dust accumulated on decks or elsewhere during loading or discharge should be washed off as soon as possible to prevent adhesion.

SHIPMENT OF DIRECT REDUCED IRON (DRI)
(Proposed Code)

Material	UN No., IMCO Class No., MFAG Table No.	Approximate Angle of Repose	Approximate Stowage Factor m^3/tonne	Segregation and Stowage Requirements	Properties, Observations and Special Requirements
Direct Reduced Iron, DRI (not to be confused with sponge iron entries) such as lumps, pellets and cold moulded briquettes *Definition:* DRI is a metallic product of a manufacturing process formed by the reduction (removal of oxygen) of iron oxide at temperatures below the fusion point of iron. Cold briquettes shall be considered those having been moulded at a temperature of under 650oC or having a density under 5.0.	- MHB	*33o *(to be verified by shipper) Briquettes may be less	*0.5	Boundaries of compartments where bulk DRI is carried should be resistant to fire and liquids. Separated from materials of classes 2, 3 4 and 5 and class 8 acids.	*Properties:* DRI may react with water and air to produce hydrogen and heat. The heat produced may cause ignition. Oxygen in an enclosed space may be depleted. *Lumps and Pellets:* Average particle size 6mm to 25mm with up to 5% fines (under 4mm). *Cold Moulded Briquettes:* Approx. Max.Dim.=35mm - 40mm *Special Requirements:* *Certification:* *A competent person should certify to ship's Master that the DRI is stable and suitable for shipment. Shippers should certify that the material conforms with the requirements of the Code. *Shippers' Requirements:* The shipper may provide advice in amplification of this Code but not contrary thereto in respect of safety during carriage. **A Competent Person shall be deemed by his Administration qualified to attest and certify to the conditions of the cargo for carriage.*

Material	UN No., IMCO Class No., MFAG Table No.	Approximate Angle of Repose	Approximate Stowage Factor m^3/tonne	Segregation and Stowage Requirements	Properties, Observations and Special Requirements
Direct Reduced Iron, DRI, (not to be confused with sponge iron entries), Lumps, pellets and cold moulded briquettes. *Continued*					*Precautions:* (1) Prior to loading: All holds should be completely clean and dry. Bilges should be sift proof and kept dry during the voyage. Wooden fixtures such as battens, etc. should be removed. Where possible adjacent ballast tanks other than double bottom tanks should be kept empty. Weatherdeck closures should be inspected for integrity. (2) DRI should not be loaded if product temperature is in excess of 65oC or 150oF. (3) Any shipment which is wet or is known to have been wetted should not be accepted for carriage. (4) Materials should be loaded, stowed and transported under dry conditions. (5) Holds should be provided with oxygen, hydrogen and temperature monitoring instrumentation. (6) After loading the cargo hold should be effectively inerted and so maintained. (7) Holds containing DRI products may become oxygen depleted and all due caution must be exercised upon entering such compartments. (8) Radar and RDF scanners should be adequately protected against dust during loading and discharging operations.

Material	UN No., IMCO Class No., MFAG Table No.	Approximate Angle of Repose	Approximate Stowage Factor m^3/tonne	Segregation and Stowage Requirements	Properties, Observations and Special Requirements
Briquettes, Hot Moulded *Definition:* A product of a densification process whereby the DRI feed material is at a temperature greater than 650oC at time of molding and having a density greater than 5.0.	- MHB	*38o *(to be verified by shipper)	*0.35	Boundaries of compartments where bulk DRI is carried should be resistant to fire and liquids. Separated from materials of classes 2, 3 4 and 5 and class 8 acids.	*Properties:* Product may slowly evolve hydrogen after contact with water. Temporary self heating of about 30oC may be expected after material handling in bulk. Approx. size: length 90 to 130mm width 80 to 100mm thickness 20 to 50mm. Briquette wt.0.5 to 2.0kgs. Fines: up to 5% (under 4mm). *Observations:* Open storage is acceptable prior to loading. Loading during rain is unacceptable. Unloading under all weather conditions is acceptable. During discharge a fine spray of fresh water is permitted for dust control. *Special Requirements:* *Certification:* *A competent person should certify to ship's Master that the hot moulded briquettes are stable and suitable for shipment. Shippers should certify that the material conforms with the requirements of the Code. **A Competent Person shall be deemed by his Administration qualified to attest and certify to the conditions of the cargo for carriage.*

Material	UN No., IMCO Class No., MFAG Table No.	Approximate Angle of Repose	Approximate Stowage Factor m^3/tonne	Segregation and Stowage Requirements	Properties, Observations and Special Requirements
Briquettes, Hot Moulded *Continued*					*Shippers' Requirements:* The shipper may provide advice in amplification of this Code but not contrary thereto in respect of safety during carriage. *Precautions:* (1) Prior to loading: All holds should be completely clean and dry. Bilges should be sift proof and kept dry during the voyage. Wooden fixtures such as battens, etc. should be removed. Where possible adjacent ballast tanks other than double bottom tanks should be kept empty. Weatherdeck closures should be inspected for integrity. (2) Hot moulded briquettes should not be loaded if product temperature is in excess of 65oC or 150oF. (3) Holds containing DRI products may become oxygen depleted and all due caution must be exercised upon entering such compartments. (4) Adequate surface ventilation should be provided. (5) Radar and RDF scanners should be adequately protected against dust during loading and discharging operations.

PROMPT NOTIFICATION OF P&I CLAIMS

The Committee have instructed the Managers to draw the attention of all Members to the requirements of Rule 13 of Class 5, most particularly the provision that claims may be rejected altogether if not notified to the Association within 12 months of the Member having received notice of the claim being made against him.

This cannot be regarded as an unreasonable time-bar and the Committee have indicated that strict enforcement of it will be required in future.

PRIOR APPROVAL OF FD&D PROCEEDINGS

The attention of all Members of Class 8 is also drawn to the requirement of Rule 8(ii) of that Class whereby, for costs to be recoverable under FD&D, approval must first have been obtained to the incurring of such costs.

For this purpose the Managers will ordinarily need to submit a report to the Committee setting out the circumstances of the dispute, together with an evaluation of the prospects of success, so that the Committee can decide whether or not the Member's action should be supported.

Unless a Member prefers to waive any claim under the FD&D cover, he should endeavour to have his lawyers hold up the proceedings to allow such a report to be submitted at one of the Committee's monthly meetings. Without the necessary prior approval, no subsequent claim for costs can strictly be entertained.

LIBYA - RESTRICTIONS ON GEARLESS SHIPS AND SHIPS OVER TWENTY YEARS OLD

The Libyan Government has published a decree banning entry to its ports from 5th May 1981 of:

A. All Gearless Vessels.
B. All Vessels exceeding 20 years of age from date of launching.

There are exemptions for:

1. Vessels in distress.
2. Vessels used for pleasure and other non-commercial purposes.
3. Libyan vessels.

We are also advised that the Secretary of the General Popular Committee for Communication and Marine Transport may, upon request, allow exemption for vessels engaged on a regular liner service.

DIRECT REDUCED IRON PELLETS

Direct Reduced Iron Pellets, a comparatively new product used in the steel making industry, are now being offered for shipment in bulk from the USA, Canada, Mexico, Venezuela and Germany, and possibly some other countries, and some very serious problems have occurred during shipment.

During reduction, oxygen is removed from the pellets of ore and their porosity is consequently increased, producing metallic iron with a sponge-like structure and a large specific surface area. This structure means that direct reduced iron pellets will readily re-oxidise and re-oxidation occurs if the pellets are heated above a certain degree or if they are wetted by water. Contact with water may generate both heat and hydrogen which may give rise to a risk of explosion. Heating may, in turn, stimulate re-oxidation of unwetted pellets resulting in a chain reaction of heating through the pellets which may produce temperatures, in a free supply of air, in excess of 1,000oC. The ability of this cargo to re-oxidise through contact with water, with the consequent problems produced by heating and hydrogen, represents the major difficulty in its carriage by sea.

There is presently no reference to direct reduced iron pellets in the IMCO Dangerous Goods Code or in the Bulk Cargo Code and the best means of carriage is now under consideration by IMCO to whom the International Group of P&I Clubs are preparing representations. Pending their findings, Members are advised to make specific reference to this product in their Charterparties if they wish to exclude its carriage in bulk.

ANTICIPATORY GUARANTEES

The Committee have recently confirmed the attitude, which has so far been adopted by all the Clubs, that open-ended guarantees should not be given in advance of any actual claim having arisen. Unfortunately demands for such guarantees are being made increasingly at various ports throughout the world, particularly where ships' agents are exposed under local law to potential liability e.g. for cargo claims which may be made only after the ship concerned has left. This however is more properly a matter of the terms on which the agency for a ship will be accepted and, if the local agents require it, Owners may themselves have to arrange a Bank Guarantee to cover the agents' position. Club guarantees can only be provided (subject to the usual considerations, including Calls being paid up to date etc.) where a demonstrable claim has in fact arisen.

The Committee also consider that the general attitude is correct not even to telex confirmation of entry (with or without details of the terms of entry) which could similarly become a universal demand. The administrative burden would then obviously be intolerable, but apart from that the purpose of any such enquiry would seem to imply a guarantee that all claims would eventually be met and any such blanket commitment is of course equally unacceptable to the Association. There is however nothing to prevent Members themselves confirming to their agents that a ship is entered in the Association (or giving details of the terms of entry) if so requested by the agents.

These matters were given consideration by the Committee in a recent case where a Member's ship had been delayed at Doha whilst the Member was arranging the necessary Bank Guarantee upon which the local agents had insisted. Whilst feeling every sympathy for the Member, the Committee did not feel able to accept any claim under the Omnibus Rule or otherwise for the loss of time or disbursements during the delay.

Members are therefore urged always to check with the agents in advance what the local requirements may be.

SHIPMENTS OF STEEL

On 25th August 1978 Members were advised by Circular that, for the cost of pre-loading surveys of steel shipments to be reimbursed by the Association, it would no longer be insisted upon that only the Master should have signed bills of lading. (The importance of strict control of the signature and clausing of the bills of lading to reflect the surveyors' findings nonetheless remains obvious.)

The Committee are still keeping under careful review the continuing problem of the serious claims which result from the carriage of steel. Although it is known that many such claims are grossly exaggerated, if not actually fraudulent, this is very difficult to prove - particularly in the many cases where some degree of damage has been caused by indisputable entry of seawater through the hatches.

In this context, standards of maintenance sufficient for other cargoes may have to be regarded as inadequate for steel, a cargo with a low centre of gravity producing a very stiff ship which suffers severely in heavy weather. Small defects, like a few inches of missing gasket, can allow the entry of seawater resulting in serious claims as described above.

The Committee have therefore directed that in arranging pre-loading surveys of steel the surveyors should at the same time be instructed to make a detailed examination of the condition of the hatches and should record in the survey report their findings and recommendations in that respect also, even if (as it is to be hoped may often be the case) no defects are found. Regarding any defects which may however be noted by the surveyor, these should be reported on the spot to the Master who should either have been authorised in advance to have them put right immediately or at least should be required by Owners to report back to them specifically for a decision before sailing.

Unless it appears from the survey report that the surveyor has had his attention properly directed to the condition of the hatches, since such a survey would have to be regarded as deficient in this essential respect, the cost will not be reimbursed by the Association.

Representatives at ports from which steel is regularly shipped and who therefore regularly assist Members in the arrangement of pre-loading surveys are being sent copies of this Circular so that they will also understand the new requirement.

DELIVERY OF CARGO WITHOUT PRODUCTION OF BILLS OF LADING

An increasing number of Shipowners have recently experienced problems and come under pressure from Charterers and Cargo Interests "instructing" them and their Master to deliver cargoes without the original bills of lading being surrendered.

Arrival of cargo at the discharging port before the bills of lading is often a genuine problem which has faced most Owners from time to time. Unless in their sole discretion the Committee shall otherwise determine, this is outside P&I cover. Nevertheless to help solve that problem the undersigned Associations could supply special forms of indemnity, which require not only the signature of the party requesting delivery of the cargo concerned, but counter-signature by a reputable bank.

However some Charterers are now demanding in advance during chartering negotiations a special Charterparty Clause such as:

> "Should bills of lading not arrive at discharging port in time then Owners agree to release the entire cargo without presentation of the original bill of lading."

It is feared that many more Charterparties than those which have been brought to the notice of the undersigned Associations may indeed contain similar Clauses purporting to transfer consequential liabilities and risks to the Shipowner which are in direct conflict with the essential legal basis of all maritime transport.

Members are warned against accepting any Charterparty Clause of this type, the consequences of which will not be covered by the undersigned Associations unless the Committee in their sole discretion shall otherwise determine.

SHIPMENTS OF STEEL

In previous Circulars the importance has been stressed of Mates' Receipts and bills of lading being claused to record all visible damage to cargo at the time of shipment, in particular any rusty condition of steel. Attention was also drawn to Charterers or their agents sometimes signing clean bills of lading despite the Mates' Receipts having been claused, and it was recommended that in no case involving carriage of steel should Charterers or their agents be authorised to sign bills of lading, even if such authority was qualified "in accordance with Mates' Receipts". Indeed compliance with the latter recommendation was made a prerequisite to the Association paying the cost of pre-loading surveys, which Members were also urged to arrange (with the assistance of the Association's local representatives) in respect of steel cargoes.

It is now recognised that circumstances cannot always be avoided in which bills of lading will in the end be signed by Charterers or their agents, but the value of detailed pre-loading surveys of steel has proved so vitally important to establish the true condition of the cargo at the time of loading, that the Committee have decided that Members should be allowed to submit the cost of all such surveys henceforth as a proper claim on the Association in any event.

This is an exceptional decision applying only to steel cargoes, since routine surveys would ordinarily be treated as an operational expense for a Member's own account; it is hoped however that these pre-loading surveys will help Members in their continued efforts to ensure that both the Mates' Receipts and the bills of lading are appropriately claused with the surveyors' notations.

SAUDI ARABIA

Many Members will already be aware of the requirements recently imposed by the Ports Authority in Saudi Arabia. These requirements can be divided into two parts.

First, any ship which is more than 15 years old on 1st December 1976 and which loads cargo for a Saudi Arabian port on or after that date will not be allowed to discharge at any such port unless there has been a "condition survey" to establish that the ship is cargo-worthy in every resect and that the deck machinery is "adequate to meet the standard of discharge in the ports of Saudi Arabia". It is understood that a valid cargo gear certificate issued by one of the leading classification societies may be sufficient for these purposes, although if the certificate is dated prior to 1st December 1976 there is a risk of re-inspection of the cargo gear in Saudi Arabia.

Second, in relation to ships **of any age**, "the stowage of all cargo shall be surveyed on the arrival of the vessel. All cargo damaged by any means shall not be discharged and the Shipowner shall be responsible for disposal". Another notice previously issued by the Jeddah Port Administration indicates that discharge of particular consignments will not be permitted if the survey referred to above indicates that further handling will cause either an unacceptable degree of damage to the goods, delay to the working of the ship or delay to the orderly delivery to the consignees.

Members who wish, despite these requirements, to continue to trade to Saudi Arabia with ships more than 15 years old should ensure that the documentation on board such ships is sufficient to allow discharge to take place at Saudi Arabian ports.

Those Members whose ships may be chartered for a voyage to Saudi Arabia, or which may be time-chartered for trading to areas which could include Saudi Arabia, are recommended to seek inclusion in such Charters of the following provision: "Charterers shall meet all costs, losses and expenses incurred and pay for all time spent in consequence of and/or compliance with all requirements whatsoever of the Saudi Arabian Ports Authority (including the Jeddah Port Administration)."

Moreover, Members are requested to advise their P&I Association immediately if, after the cargo survey referred to above, the ship is not allowed to discharge its cargo.

In the meantime the undersigned Associations are considering the steps that might be taken generally to alleviate these problems.

COLOMBIA - POLLUTION REGULATIONS

In recent months the Colombian Authorities have been enforcing the provisions of their pollution law which require that all ships calling at Colombian ports provide evidence of financial responsibility for pollution damage in the amount of US$100,000. **It will be appreciated that the Associations are unable to provide on behalf of Members evidence of pollution insurance to individual Governments or States, except for the United States (FMC 225 Forms) and those countries which have ratified the 1969 Civil Liability Convention on Oil Pollution Damage ("Blue Cards").**

The authorities in Colombia have so far accepted that production by the Master, on arrival, of a copy of the ship's certificate of entry in an Association and a copy of the Association's Rule Book is sufficient to comply with the regulations. Members are therefore strongly advised to ensure that these documents are on board at all times when trading to Colombia.

Failure to produce these documents may result in delays and the imposition of fines. In the past the Associations' correspondents, Pandicol Ltda., Bogota, have been able to assist in individual cases by confirming to the authorities, after consultation with the appropriate Association, that a particular ship is entered. This assistance will continue to be available to Members in future but as from 1st January 1977 any costs incurred as a result of the Member's failure to ensure that the necessary documents are on board will be for the Member's own account.

SUPPLY VESSELS AND ANCILLARY CRAFT ENGAGED IN CONNECTION WITH OFF-SHORE INDUSTRY

The increase in off-shore exploration, drilling and production of minerals worldwide has brought with it an abundance of differing contracts relating to the use of supply vessels, and other ancillary craft employed on such operations.

We, the undersigned Clubs, feel that it might be useful to clarify to Owners and Charterers of supply vessels the extent to which protection and indemnity cover can be afforded for liabilities arising under contracts commonly in use, and with this aim, we set out the following guidelines:

(1) The Clubs will only cover Owners for statutory or common law liabilities or for contractual liabilities which are assumed under a Charterparty which distributes liability between the Owner and Charterer as follows:
The Owner to be responsible for loss of or damage to his vessel or death or injury to his crew irrespective of whether there is any fault or neglect on the part of the Charterer and/or his servants and the Charterer to be similarly responsible for death or injury of his personnel and loss of or damage to his equipment.

(2) Charterers (and others) who are additional assureds and who are named as additional assureds in the Owner's Club cover will only be covered insofar as they may be found liable to pay in the first instance for liabilities which are properly the responsibility of the Owner (including liabilities assumed by the Owner) under a Charterparty agreed by the Club. The Clubs' limitation of liability rules will apply.

(3) Charterers may apply to the Clubs in the normal way for Charterers' liability cover at terms and rates to be agreed individually. The Clubs' standard limits for Charterers will apply.

(4) Cover can be provided in respect of carriage of cargo only on the assumption that the Hague Rules (or similar terms and conditions) apply to such carriage.

(5) Indemnities should not be given by Owners to Charterers unless Owners' right to limit liability is preserved. We recommend that a clause along the following lines is used:
"Nothing contained in this Agreement shall be construed or held to deprive the Owner of any right to claim limitation of liability provided by any applicable law, statute or convention."

Owners of vessels being chartered for any activity in connection with the off-shore industry are strongly recommended to contact their Club if they have any doubts about the extent of their cover for any contractual obligations which they may have towards Charterers.

U.S. APPORTIONMENT OF MUTUAL FAULT COLLISION LIABILITY, BOTH TO BLAME COLLISION CLAUSE

Members are no doubt aware of the recent decision of the U.S. Supreme Court in the case of United States v. Reliable Transfer Inc., opening the way under U.S. law now to make a proper apportionment of liability between colliding ships where each was at fault. Previously the choice was either 100% liability attaching to one ship alone or liability apportioned equally to both regardless of any difference in degrees of fault.

It should not be thought however that this does away with the need for Both to Blame Collision Clause in contracts of carriage subject to U.S. law, the inclusion of which may indeed have become even more important. Some American lawyers think that the U.S. Supreme Court might reverse an earlier decision and reinstate the validity of the clause as the easiest means of bringing U.S. law into line the rest of the way with the 1910 International Convention, as regards Cargo Interests' rights of recovery also being only proportionate.

LIABILITY FOR LIGHTENING/TRANSHIPMENT OF CARGO

For the carriage of bulk grains and other commodities, particularly to India, Pakistan and Bangladesh, Charterparty terms often have to be agreed making the Shipowner responsible for lightening or transhipment of the cargo to the discharge ports from some distance away "at Owners' risk and expense".

Liability for loss of or damage to cargo which could in this way arise during carriage by a vessel other than the entered vessel should not of course be regarded as within the latter's P&I cover.

Members who enter into such contracts should therefore be aware that for an additional premium Shipowners' or Charterers' potential cargo liability in respect of all such lightening operations can be covered by an S.O.L. policy to a limit of US$10m any one operation. This can be arranged by declaration to the Managers in advance.

There can of course be circumstances in which liability for loss of or damage to cargo after discharge from an entered vessel during conveyance from ship to shore, or even ashore, will be treated as within ordinary Club cover, i.e. where there is no deliberate prolongation of Through Carriage (for which the appropriate cover before or after carriage by the entered vessel would be under Rule 7(hh) of Class 5) and liability has arisen despite the bill of lading or other carriage contract terms having sought to terminate liability on discharge.

OIL POLLUTION 1969 CLC - CERTIFICATES OF INSURANCE

Liberian Registered Ships

The Liberian Bureau of Maritime Affairs in New York have indicated that although Owners can list more than one ship in a single letter of application (as suggested in our Circular of 30th April), extra copies of any such letter should be included so that there is one for each ship with the appropriate blue card attached.

Greek Registered Ships

We have been advised that Greece is in course of ratifying the Convention, even before which however the Greek Government will issue Certificates for Greek registered ships and will accept Club blue cards in their present form. Application can be made at any time after 1st June by informal letter addressed to The Ministry of Merchant Marine of Greece, Piraeus, or to offices of the Greek Shipping Services abroad who may be authorised to issue such certificates and who will no doubt confirm this on enquiry locally. For the time being the Greek Government does not intend making any charge.

Members requiring blue cards for Greek registered ships should send the Managers as soon as possible the necessary particulars listing each ship's name, official number and port of registry as well as the Owner's full name and registered address.

Until Greece has ratified the Convention it will not of course be compulsory for Greek registered ships to carry Certificates except when trading to Convention countries, for which purpose (at least as an interim measure) it is hoped Greek Certificates will be acceptable. The U.K. Government has already confirmed its agreement to this as mentioned in paragraph 7 of our Circular of 22nd April.

OIL POLLUTION - 1969 CLC, LIBERIAN REGISTERED SHIPS - CERTIFICATES OF INSURANCE

Since our Circular of 2nd April we have been advised that Club "blue cards" will be acceptable to the Liberian Bureau of Maritime Affairs. The Office of Deputy Commissioner of Maritime Affairs of Liberia, 103 Park Avenue, New York 10017, is now open to application by letter from the Owners of any Liberian registered ship, which letter should be accompanied by a "blue card" for the ship concerned and a cheque for US$50 payable to "Deputy Commissioner of Maritime Affairs, R.L.".

Members requiring "blue cards" for this purpose should list the ships concerned showing the respective Owner's names and addresses, as well as the official number and port of registry for each ship.

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE 1969

Certificates of Insurance

1. The above Convention, having been "ratified" by Algeria, Denmark, Dominican Republic, Fiji, France, Ivory Coast, Lebanon, Liberia, Morocco, Norway, Senegal, Sweden, Syrian Arab Republic and the United Kingdom, enters into force on 19th June 1975.

2. Under Article VII the Owner of a ship registered in a Contracting State carrying more than 2,000 tons of persistent oil in bulk as cargo is required to maintain insurance or other financial security to meet the limits of liability prescribed in the Convention of 2,000 gold francs per limitation ton or 210 million gold francs, whichever is the lesser. A Certificate of Insurance, in the form annexed to the Convention, against liability for oil pollution damage shall be issued to each ship by the "appropriate authority" and must be carried on board the ship and a copy deposited with the authorities who keep the record of the ship's registry. Furthermore each Contracting State is required to ensure, under its national legislation, that no ship, wherever registered, actually carrying more than 2,000 tons of persistent oil in bulk as cargo shall enter or leave any port or off-shore terminal in its territory or territorial sea unless it has on board a valid Certificate of Insurance.

3. The United Kingdom is the first country to publish how it intends to give effect to the Convention, namely by making operative the relevant provisions of the Merchant Shipping (Oil Pollution) Act 1971, together with The Oil Pollution (Compulsory Insurance) Regulations 1975 ("the U.K. Regulations") shortly to be laid before Parliament. These in accordance with the Convention will require any U.K. registered ship carrying in bulk a cargo of more than 2,000 tons of persistent oil to have on board a Certificate of Insurance for potential liability for oil pollution damage up to the Convention limits (at present approximately £70 per limitation ton, maximum £7.3m), which such a ship may cause in the jurisdiction of any State which is a Contracting Party to the Convention; ships wherever registered when trading to or from the U.K. and when carrying more than 2,000 tons of persistent oil in bulk as cargo will also have to have on board such a Certificate.

4. It is expected that all other Contracting States will make similar arrangements for their registered ships and for other ships trading to or from their waters. It is understood that Liberia will be issuing its procedure in the form of a Marine Notice in early May and it is expected that Denmark, Norway and Sweden will shortly finalise their arrangements.

5. In support of applications for the Certificates which it will issue, the U.K. Government will accept a "blue card" from the Club confirming that the ship concerned has the required insurance cover.

6. Applications for Government Certificates can only be made in the name of the registered Owner. If the ship is registered in a Contracting State (i.e. one of the "ratifying" countries listed in paragraph 1 above or a country which

ratifies thereafter) application should be made to that Government. The U.K. Government will therefore issue Certificates for U.K. registered ships and for non-Convention registered ships trading to or from the U.K. which will have to have some such Certificate before entering U.K. waters. It is hoped that a Certificate for a non-Convention registered ship obtained in this way from the British Government to cover a possible call in the U.K. will be acceptable in other Contracting States during the currency of such Certificate. Unlike FMC Certificates, the U.K. Government will not issue Certificates which are valid beyond twelve calendar months and the period of the validity of the Certificate cannot be longer than the period of validity of the insurance.

7. Some non-Convention States may make their own arrangements for certification for their own registered ships even before they ratify the Convention, and the U.K. Government has indicated that it will recognise Certificates issued by the following countries in respect of their own registered ships:

Australia	Republic of Ireland	New Zealand
Austria	Iceland	Portugal
Belgium	Italy	Spain
Canada	Japan	Switzerland
Finland	Luxembourg	Turkey
Greece	Netherlands	USA

It is not known whether other Convention countries will be ready to recognise Certificates issued by these non-Convention countries in the same way as the U.K. will do.

8. The U.K. will also recognise Certificates for ships registered in any non-Convention country if issued by the Government of: Denmark, France, Norway and Sweden, but in the case of Certificates issued by such Governments or any Government listed in the previous paragraph, the Certificate must cover the whole period of any voyage to, from or between U.K. ports.

The position of Certificates issued by the Federal Republic of Germany will depend upon whether or not she ratifies the Convention before the U.K. Regulations enter into effect on the 19th June.

9. Therefore, Members with ships registered in Convention countries should find out from their Government what the appropriate arrangements are going to be.

10. Owners of British registered ships should:
    (a) Write as soon as possible to the Club giving their name and registered address together with the names, official number and port(s) of registry of the ships for which they require "blue cards".
    (b) Complete Application Form 1(OP)2, copies of which can be obtained from the Club in the present instance.
    (c) Send the completed Application Form 1(OP)2, which can cover all their ships together with the "blue card(s)" and application fee of £30 per ship to: Department of Trade, Insurance Division, Room 320,

Sanctuary Buildings, 16-20 Great Smith Street, London, SW1 3DB. The remittance is to be made in Sterling and made payable to: "The Department of Trade", which is the U.K. issuing authority. Cheques must be crossed. Representations have been made to the Department regarding the amount of the fee and if successful the Department has undertaken to make the requisite refund.

11. Owners of non-Convention ships registered in the countries listed in paragraph 7 above should find out if their Governments are going to make any arrangements which would at least be acceptable for the purpose of U.K. trading. If not, then for the purpose hopefully of more widespread acceptability, they could follow the same procedure as in paragraph 10.

12. Member are reminded that this Circular only concerns ships carrying more than 2,000 tons of persistent oil in bulk as cargo, and the definition of "persistent oil" as contained in the U.K. Regulations is also appended.

Further advice will be given as soon as other countries' intentions are made known.

Definition of "Persistent Oil" in the proposed U.K. Regulations

"Persistent oil" means any of the following:

(a) hydrocarbon mineral oils, whether crude or distilled, including crude coal tar and the oily residue of tank cleaning operations necessitated by the carriage of any such oils, but excluding those oils which consist wholly of distillate fractions of which more than 50% by volume distil at 340°C when tested by the "American Society for Testing and Materials Specification D 86/67" in the case of oils derived from petroleum and at 350°C in the case of oils derived from coal tar;

(b) residual oil, consisting of mineral hydrocarbons comprising the residues of the process of distilling and/or refining crude petroleum, and any mixture containing such residual oil; and

(c) whale oil.

LAID UP SHIPS

The attention of Members is drawn to the provisions of Rule 15 whereby a ship remaining in any safe port for thirty or more consecutive days may qualify for a laid up return.

The Managers will regard any ship laid up in a port or place which is approved by her hull underwriters as being within a safe port for the purpose of this Rule. Members are expected to comply with any recommendation made by the hull underwriters as to safety measures, such a periodic gas-freeing in the case of tankers.

INSURED VALUES - CLASS 5: RULES 7(B), 7(M) AND 8(A)

The above Rules make reference to the requirement that for P&I purposes, in particular Collision and General Average, every entered ship shall be deemed to be insured "for her full value" under standard Hull and Machinery Policies, including the Running Down Clause.

The Committee have instructed the Managers to advise Members that ordinarily they should expect this requirement to be interpreted as insurance up to the market value of the ship **free of commitment**, although if a case should arise in special circumstances the Committee will always have a discretion as provided in the Rules to treat a lesser value as appropriate.

If Members do not in fact choose to have Hull and Machinery insurance up to the required value, it is possible to arrange excess liability policies for what would then be the short-fall in their P&I cover. Members are also reminded that although a ship may be insured for her full value, as above, if this is less than the limitation figure referred to in Rule 8(a) which since 1st April 1974 has been £34.8929 per g.r.t.*, then by that Rule the ship is deemed to be insured by excess policies against 3/4ths R.D.C. liability for the difference up to the limitation figure which is therefore the effective minimum requirement for P&I purposes.

* Since increased.

CALCIUM HYPOCHLORITE

The carriage of calcium hypochlorite, with concentrations of 60% to 70% available chlorine, sometimes erroneously described as bleaching powder, has given rise to several marine disasters in recent years involving fires and explosions resulting in serious hull and cargo damage as well as loss of life.

At the instigation of the London Group of P&I Clubs full-scale investigations are being carried out into the properties of this chemical which is known to react vigorously when in contact with organic material. In addition, there is increasing evidence that in certain circumstances drums of this commodity can undergo decomposition to produce fire and explosion without the apparent need of initiation by an external agent.

Pending the final outcome of these investigations expert advice has been sought as to the best methods of handling and stowage bearing in mind the known dangers based on present information and the following recommendations are made:

(1) This cargo should only be carried on deck.

(2) The drums must be carefully inspected prior to shipment to ensure that they are sound, free from any oil or grease and that the lids are securely fastened.

(3) Drums awaiting shipment, whether in containers or not, should be stowed at a safe distance from goods of an inflammable nature.

(4) Carriage on deck in containers:

(a) before stuffing the containers the Standard International IMOC label for Class 5 Oxidising agents or the appropriate label for the country of origin must be affixed to each external face of the container;

(b) the containers must be entirely clean, free from any combustible material and from any oil or grease stains;

(c) under no circumstances should calcium hypochlorite be stowed with any other cargo in the same container. Furthermore, only drums of the same size should be stowed in each tier;

(d) if fork lift trucks are used for stuffing extreme care must be taken to avoid any oil leakage from the fork lifts on to the floor of the container;

(e) an entirely secure stow must be achieved within the container with the appropriate use of chocking and substantial timbers.

(5) Carriage on deck not in containers:

(a) the stow must be absolutely secure, in level tiers, with clean plywood dunnage (preferably brushed with sodium silicate solution to render it fireproof) between each tier;

(b) the stow must be completely covered with clean and well secured tarpaulins;

(c) the drums must be stowed well away from the other deck cargoes of an inflammable or organic nature;

(d) the cargo should not be stowed on the hatch covers.

As will be seen, this commodity is inherently dangerous and the utmost care must be taken in handling and stowage. If a spillage does occur prior to, during or subsequent to loading the spillage should be thoroughly washed away before the drums are finally secured or before the containers are closed. In the case of a subsequent spillage or fire copious quantities of water only should be used to wash away the chemical or to extinguish the fire.

Investigations are still continuing and if these cause us to amend or extend these recommendations a further Circular will be issued. In the meantime we are enclosing sufficient copies of this Circular for one to be sent to the Master of each of your vessels entered in the Association.

SHORTAGE OF BUNKERS

Some Members have felt concern about chartering their ships for voyages now that ordinary bunkering arrangements cannot always be relied on and the Managers have suggested that some protection could be had from inserting a clause in the Charterparty as follows:

> "Owners not to be responsible if problems in obtaining bunkers should prevent or delay the commencement and/or performance of this Charterparty including the commencement and/or performance of any approach voyage in relation thereto and in either of the last mentioned events any expected readiness or cancelling date shall be postponed to the extent of any such delay."

The intention of this clause would simply be to relieve Owners from claims but they would still be required to wait for bunkers at their own expense so that the Charterparty could ultimately be performed, unless the delay reached frustrating proportions. Much wider wording (which would almost certainly be unacceptable to Charterers) would be needed to allow Owners to throw up the Charterparty and discharge cargo short of destination, etc.

SHIPMENT OF CONTAINERS ON DECK OF CONVENTIONAL VESSELS

In two recent cases involving shipments from the United States, Members have had to pay substantial claims where containers have been washed overboard from conventional vessels. They have been held liable for the loss following earlier American Court decisions that shipping containers on deck on conventional vessels without specifically endorsing the bills of lading is a deviation or fundamental breach of contract notwithstanding a bill of lading Liberty Clause permitting Owners so to carry containers on Hague Rule terms.

If in future containers are shipped on deck of conventional vessels bound to or from the USA in reliance only on a Liberty Clause without the bills of lading being specifically endorsed "shipped on deck" Members will either have to take out their own S.O.L. cover or immediately advise the Managers so that S.O.L. cover can be arranged at their expense.

It should be noted that the U.S. Courts have held that shipment on deck of a specially constructed container vessel is not a deviation.

To strengthen the bill of lading Liberty Clauses in other jurisdictions Members should ensure so far as possible that Booking Notes and Advertised Terms of Carriage as well as the bills of lading all include such a Clause or refer to the carriers' right to ship on deck. If in doubt whether any jurisdiction involved might follow the U.S. Court rulings described above, the bills of lading should be specifically endorsed "shipped on deck".

CANADIAN ARCTIC WATERS POLLUTION PREVENTION ACT

This Act came into force on 2nd August 1972 but after lengthy discussions between the Clubs and the Canadian Government, instructions how the regulations relating to evidence of financial responsibility should be implemented have only recently been published.

As these financial responsibility regulations are now effective Members should note:

(1) The Act applies only to Canadian Arctic Waters north of the 60th parallel, although this will of course cover passage to and from the Hudson Bay.

(2) A Shipowner will be liable for the deposit of "waste" in these Canadian Arctic Waters subject to the limits of liability provided in the 1969 International Convention on Civil Liability for Oil Pollution Damage. At present the definition of "waste" is the same as that of "oil" in the Convention, i.e. persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

(3) All Owners whose vessels carry "waste" in bulk either as cargo or fuel into these Canadian Arctic Waters must file with the Canadian Minister of Transport a sworn declaration as to the scope of their insurance for this liability.

(4) If a vessel carries more than 2,000 tons of Awaste≅ in bulk as cargo the Owner shall file a duplicate original of a Special Policy Endorsement together with the sworn declaration. This Special Endorsement may be obtained from the Association.

Any Members who are engaged in trade to Canadian Arctic Waters north of the 60th parallel covered by this Act should apply to the Managers if a Special Endorsement is required. If such Members do not already have them, copies can be supplied of the Instructions to Shipowners which set out the regulations relating to evidence of financial responsibility and the information to be included in the declaration to the Minister of Transport.

CUSTOMS' PENALTIES IN ALGERIA

Many countries have stringent customs' regulations providing for heavy penalties in cases of infringement. Usually, however, the customs' authorities concerned are willing to accept in settlement a much smaller amount than that strictly due under the regulations, particularly in those cases where good faith can be shown.

Until about a year ago, no particular difficulty was experienced with regard to customs' penalties in Algeria, but recent cases seem to indicate a tendency on the part of the customs' authorities there to interpret their customs' regulations, at least in some cases, with extreme severity. Where ships have arrived with incomplete or inaccurate documentation, fines exceeding US$1m have been demanded.

It is furthermore, usual for the ship and her crew to be detained until payment is made (in one instance, the ship, together with her Master and chief officer, were held in Algeria for over a year) since the customs' authorities generally refuse to release a ship in exchange for an Association's letter or other form of guarantee. Members are reminded that even if a guarantee were acceptable to the authorities, the provision of bail is a matter within the Association's discretion and Members cannot count on their Association providing bail in a case of this nature.

We must advise our Members to take scrupulous care to ensure that, in the event of any of their ships calling at Algerian ports, the ship's papers are entirely in order. Whilst full details of the customs' requirements can doubtless be obtained from the local agents, Members should note that a manifest in due form is required for all cargo, including that in transit for non-Algerian ports. We would further point out that, if a similar case should arise in the future, a Member's right of recovery from the Association concerned may be prejudiced if proper care was not taken to ensure that the ship's documentation was correct. We would, in addition, remind Members that the Rules of all Associations exclude claims relating to the detention of the entered ship.

REVISED TOVALOP C/P CLAUSE

Since the inception of TOVALOP it has been recognised that in many cases the most effective means of performing Owners' clean-up will be through the prompt intervention on Owners' behalf of major Oil Company Charterers for whom the cargo concerned is being carried.

Such Charterers have themselves for this purpose devised a variety of individual TOVALOP Charterparty clauses, most of which share the same objectives and salient features requiring Owners to join TOVALOP and in the event of an oil-spill, constituting Charterers as agents for Owners to clean-up at the latter's expenses, but subject to Owners' rights always to order discontinuance of such clean-up.

The lack of uniformity amongst these various clauses makes it difficult for an Owner and indeed his Club to recognise immediately if what is being proposed for inclusion in a Charterparty is acceptable or unacceptable. **The undersigned Associations therefore now by this present Circular recommend to all their Members that if a TOVALOP clause is requested by Charterers, the wording below should be insisted upon.**

Under existing Charterparties which already have a TOVALOP clause, Charterers should be asked to substitute the wording below for it. If they insist on retention of their clause, it will be imperative that in the event of any future oil-spill Owners should immediately give Charterers notice that they must refrain from any clean-up under that clause, although they can at the same time be authorised to proceed on the terms of this new Revised TOVALOP C/P Clause. Even on this basis, however, it will be necessary for an Owner involved in any such oil-spill to maintain the closest possible liaison with his Club, because in certain circumstances the need to order final and unqualified discontinuance of any further clean-up may still arise which is, of course, expressly preserved in the attached clause.

One of the purposes of the attached clause is to ensure that any clean-up performed under it shall qualify for relief under CRISTAL if it should exceed $125 per g.r.t. or $10m. If CRISTAL does not apply, Owners' liability is limited to the same amount as if it had, e.g. Owners of a 10,000 g.r.t. tanker themselves spend $350,000 on voluntary clean-up and Charterers (on Owners' behalf under the clause) spend $1,150,000; these amounts add up to $1,500,000 and exceed the limit (10,000 g.r.t. x $125 = $1,250,000); **to this extent Charterers do not recover their expenditure**, i.e. they recover only $900,000. It should be noted there is no *pro rata* reduction of both Owners' and Charterers' expenditure, and if Owners' own expenditure itself exceeded the limit Charterers would recover nothing; also, it is only voluntary clean-up which is brought into this calculation, not Government clean-up, third party claims, etc.

Owners who have so far resisted inclusion of any form of clause in their existing Charterparties could now be recommended to agree inclusion of the attached clause.

Nothing has been provided for reimbursement of extra TOVALOP insurance costs, which remains a matter for negotiation between Owners and Charterers. If the attached clause is being substituted for an existing clause which provides for reimbursement of extra TOVALOP insurance costs, care should be taken to retain that provision.

Revised TOVALOP Charterparty Clause

Owners warrant that the vessel is a participating tanker in TOVALOP and will so remain during the currency of this Charter, provided however that if Owners acquire the right to withdraw from TOVALOP under Clause VIII thereof, nothing herein shall prevent Owners from exercising that right.

When an escape or discharge of oil (the term "oil" for the purposes of this Clause meaning "oil" as defined in TOVALOP) occurs from the vessel and causes or threatens to cause pollution damage to coastlines, Charterers may, at their option, upon notice to Owners or Master, undertake such measures as are reasonably necessary to prevent or mitigate such damage, unless Owners promptly undertake same. Charterers shall keep Owners advised of the nature and result of any such measures taken by them and, if time permits, the nature of the measures intended to be taken by them. Any of the afore-mentioned measures taken by Charterers shall be deemed taken to Owners' authority and shall be at Owners' expense except to the extent that:

(1) such escape or discharge was caused or contributed to by Charterers, or

(2) Owners are or would have been exempt from liability for such escape or discharge by reason of the exceptions prescribed in Article III(2) of the 1969 International Convention on Civil Liability for Oil Pollution Damage, or

(3) the cost of such measures together with Owners' own reasonable removal costs exceed One Hundred and Twenty Five Dollars per gross registered ton of the vessel or Ten Million Dollars (whichever is less) in case the vessel was carrying a cargo of oil not owned by an Oil Company Party to CRISTAL (as such ownership is defined in CRISTAL and the Rules promulgated thereunder) or in case the vessel was in ballast;

PROVIDED ALWAYS that if Owners in their absolute discretion consider said measures should be discontinued, Owners shall so notify Charterers and thereafter Charterers shall have no right to continue said measures under the provisions of this clause and all further liability to Charterers under this clause shall thereupon cease.

The above provisions are not in derogation of such other rights as Charterers or Owners may have under this Charter, or may otherwise have or acquire by Law or any International Convention.

1971 AMENDMENT U.S. SHIP MORTGAGE ACT AFFECTING LIENS ON SHIPS UNDER TIME CHARTER

By Public Law 92-79, approved 10th August 1971, the United States Congress amended prior American legislation affecting the creation of liens on ships under Time Charter so that Owners are now exposed to significantly greater risks of vessels being held liable for services and supplies ordered by Time Charterers despite prohibition of liens clauses. The Federal Maritime Lien Act 33 U.S. Code, Section 971-75, provided that a person furnishing supplies by order of the Owners or a person authorised by the Owner had the right to arrest a vessel in rem. Persons authorised by an Owner included agents appointed by a Charterer. This Act contained a proviso, now deleted by Public Law 92-79, that no lien was to be conferred where the supplier knew or ought to have known that by the terms of the Charterparty the person ordering the supplies was without authority to bind the vessel.

It is considered that Public Law 92-79 fails in its purpose since it simply deletes this proviso. New York Counsel consider that the effect of the amendment can be negative where the supplier is **actually** informed that a person ordering supplies does not have authority to bind the vessel or by putting the supplier on **actual** notice of the prohibition of creating liens.

It is recommended therefore that a registered letter in Form A below be sent to the prospective supplier of goods advising him that under the terms of the Time Charter the Charterer does not have authority to bind the vessel. Additionally the Master should not accept services for materials ordered by the Charterers or their agents unless the supplier will sign a notice disclaiming any reliance on the credit of the vessel, see Form B below, which should be stamped on the documents submitted by the supplier.

In negotiating Time Charters the normal clause denying Charterers the right to create liens on the vessel (Clause 18 of the New York Produce Exchange Form) should be maintained with the addition of the following words in Form C below.

FORM A

To be signed by Owners or their agents and posted by registered letter, return receipt requested, addressed to all of the Charterers' known stevedores, suppliers of fuel and other necessaries or services at the prospective ports of call:

Dear Sirs,

We have recently chartered our ..... flag vessel named the "....." to Messrs. ..... of..... as Charterers.

It has come to our attention that in your capacity of ..... at the port(s) of ..... where our said vessel may be trading, you may be called upon by said Charterers to furnish ..... for their use in connection with the vessel.

We wish to advise for your guidance that under the terms of the Charter between us, as Owners of said vessel, and said Charterers, neither the Charterers nor the Master nor any person has power or authority to pledge either our or our said vessel's credit or, to create, or permit to be created, any liens on our said vessel and that accordingly any such ..... furnished by you to our said vessel will be so furnished solely upon the credit of Messrs. ..... as Charterers, and not on the credit of the vessel or ourselves as her Owners.

Very truly yours,

FORM B

To be endorsed as a prominent and legible rubber or typed stamped legend by the Master, Chief Officer, Chief Engineer and all other ship's officers signing receipts or other papers submitted by suppliers for fuel, stevedoring and other necessaries or services which are not under the governing Charter, ordered for the account of the Owners:

IMPORTANT NOTICE

The goods and/or services being hereby acknowledged, receipted for, and/or ordered are being accepted and/or ordered solely for the account of Charterers of the SS/MS ..... and not for the account of said vessel or her Owners. Accordingly, no lien or other claim against said vessel can arise therefor.

OWNERS OF THE VESSEL

FORM C

Suggested last two sentences of Clause 18 of New York Produce Exchange form, or equivalent clause in other forms of Time Charter; the second sentence in italics is the proposed addition to the form:

"Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the vessel. *In no event shall Charterers procure, or permit to be procured, for the vessel, any supplies, necessaries or services without previously obtaining a statement signed by an authorised representative of the furnisher thereof, acknowledging that such supplies, necessaries or services are being furnished on the credit of Charterers and not on the credit of the vessel or of her Owners, and that the furnisher claims no maritime lien on the vessel therefor.*

BERTH STANDARD OF AVERAGE CLAUSE TO BE RENAMED CHARTERERS' CONTRIBUTION CLAUSE (1971)

This Clause (sometimes known also as the Time Charterers' General Cargo Standard of Average Clause) was originally drafted in 1917 and has for many years been incorporated in the Rules of most of the London Group of P&I Associations and recommended by the Scandinavian Associations. The intention was to provide that, in the case of an Owner's ship being time chartered for liner trading, the Time Charterer would make a contribution to the settlement of cargo claims arising in the course of the operations which he would normally perform such as loading, stowing and discharging of the cargo. The contribution was assessed at £0.05 per g.r.t. in respect of claims on "any one cargo". The words "any one cargo" were interpreted by the Associations as meaning "any one cargo voyage" but in 1969 the English High Court decided in the case of Clan Line Steamers Limited v. Ove Skou Rederi A/B (1969) 1Ll.L.R.155 (The "BENNY SKOU") that the words meant "any one bill of lading". The effect of this decision was, of course, to increase considerably the Charterers' contribution to cargo claims arising whilst the ship was in his service.

After careful consideration the London Group of P&I Associations and the Scandinavian Associations have decided that it would be preferable to restore the original intention of the clause to the effect that the Charterers' contribution should be on the basis of a cargo voyage rather than a bill of lading. Accordingly, this Association's bye-law has been amended and the following becomes effective on 1st September 1971 and the other above-mentioned Associations have taken similar action. The Bye-Law appearing at page 63 of the 1970-1971 rule book headed "Time Charterers' General Cargo Standard of Claim Clauses" is deleted and the following is substituted:

CHARTERERS' CONTRIBUTION CLAUSE (1971)

Any agreement for the chartering of an entered vessel under which (a) the vessel is to load on the berth and/or load general cargo and (b) the Owners accept responsibility for cargo claims arising from improper handling during loading and/or discharging, improper stowage, short delivery (whether from pilferage or any other cause whatsoever) or over-carriage shall contain the following clause:

> In the event of the vessel loading on the berth and/or loading general cargo the Charterers shall bear a sum equal to 10p (ten new pence), or such higher sum as may be agreed, per gross ton of the vessel's maximum register in respect of claims arising on any cargo voyage from improper handling during loading or discharging, improper stowage, short delivery (whether from pilferage or any other cause whatsoever) or over-carriage for which there may as between Owners and Charterers be responsibility on the part of Owners, also in respect of any reconditioning expenses incurred in order to avoid or mitigate any such claims. If the Owners shall pay such claims in the first instance they shall be indemnified by the Charterers to the

foregoing extent. "Cargo voyage" shall for the purpose of this clause mean a passage with cargo from the first port of loading to the last port of discharging on the vessel's outward and inward voyage respectively; and if the vessel shall perform an intermediate passage with cargo between the outward and inward voyages, or any other voyage with cargo, then this shall constitute a separate "cargo voyage".

No bills of lading containing a declaration of value of goods in excess of £1,000 per package piece or unit shall be issued under this Charterparty without the Owner's prior written consent. In the event of the Charterers failing to obtain such consent, the Charterers shall indemnify Owners against all claims under any bill of lading containing such a declaration of value save to the extent (if any) to which such claims would have fallen upon the Owners in the absence of such declaration of value. The cost of any insurance in respect of the value in excess of £1,000 as aforesaid shall be borne by the Charterers.

The following points in particular are drawn to the attention of Members:

1. The new clause clearly provides that the Charterers contribute on the basis of a "cargo voyage" as defined in the clause.
2. The new provision will apply to all Charterers for liner trading whether on a time or voyage basis, the previous clause only applied to Time Charterers.
3. The new clause must be incorporated in all Charters for liner trading whether on a time or a voyage basis where Owners are ultimately responsible under such Charters for claims arising from improper handling during loading or discharging and/or improper stowage and/or short delivery and/or over-carriage. The new clause should not be used in unamended Baltime or Gencon Charterparties since under these Charters ultimate responsibility for practically all cargo claims rests with the Charterer.
4. The new clause provides for a contribution of £0.10p per g.r.t. which is thought more realistic than the previous figure of £0.05p fixed in 1917.
5. If the new clause is not incorporated into the appropriate Charterparties the Owner may find when seeking reimbursement in respect of cargo claims arising under those Charterparties that the Association applies a deductible of £0.10p per g.r.t even though a lower deductible may have been agreed in the vessel's terms of entry.
6. The new clause further provides that the Charterer must obtain the Owners' consent before issuing *ad valorem* bills of lading. This is to enable the Owner to comply with Rule 8c.

CONTRACT OF CARRIAGE - CHARTERPARTY OR BILL OF LADING

For many years there has been doubt which contract governs the carriage of cargo when the bill of lading is endorsed to the Voyage Charterer. If the cargo is short delivered or delivered in damaged condition, do the terms of the Charterparty or, alternatively, the terms of the bill of lading, determine whether or not the Shipowner is liable?

The problem was recently considered by the Court of Appeal in London in *The President of India v. Metcalfe Shipping Co.Ltd.* (The "DUNELMIA") 1969 2 L.LI.R.476. On the particular facts of that case it was held that the governing document was the Charterparty. Although that decision may not apply in all cases, it is likely to apply in most. It is important, therefore, that Members ensure that the protection given them by their Charterparties is at least as wide as that prescribed by the Hague Rules. Members are reminded that if this is not achieved, their P&I cover may be prejudiced.

Accordingly, we wish to repeat the advice given in the Circular issued by the London Group of P&I Associations on 27th February 1959. In essence that advice was that the Chamber of Shipping Voyage Charter Clause Paramount 1958 be included in all Charterparties which would otherwise provide Shipowners with less protection than the Hague Rules. The wording of this Clause and a list of Charterparties in which the Clause should **not** be included are printed below.

CHAMBER OF SHIPPING VOYAGE CHARTER CLAUSE PARAMOUNT 1958

"Notwithstanding anything herein contained no absolute warranty of seaworthiness is given or shall be implied in this Charterparty and it is expressly agreed that the Owners shall have the benefit of the Rights and Immunities in favour of the carrier or Ship and shall assume the "Responsibilities and Liabilities" contained in the Enactment in the country of shipment giving effect to the Rules set out in the International Convention for the Unification of certain rules relating to bills of lading: dated Brussels the 25th August 1924 (the "Hague Rules"). If no such enactment is in force in the country of shipment the terms of Articles III and IV shall apply. Notwithstanding the provisions of Article IV, Rule 5, the Shipowner's liability (whether contested or not) in respect of any such claim shall be limited to £200 Sterling lawful money of the United Kingdom per package or unit of cargo (unless the nature and value of such cargo have been declared by the shipper before loading and inserted in the bill of lading) notwithstanding that some other monetary limit is laid down by the legislation to which the contract of carriage is subject.

If any provision of this Charterparty shall be repugnant to the said Rules to any extent such provision shall be void to that extent, but no further. Any bill of lading issued pursuant to this Charterparty shall contain a clause paramount incorporating the Hague Rules whether they are compulsorily applicable or not."

In the following Charterparties the above Clause should **not** be incorporated because the Shipowner is adequately protected by the Clauses therein:

The Welsh Coal Charters, 1896, The East Coast Coal Charters, the Scotch Coal Charters, "COASTCON", "WELCON", "MERSEYCON", "MERSAIL", "COASTCON SAILOR", "NUBALTWOOD", "BALTWOOD" (adapted for Leningrad Trade), "RUSSWOOD", "PITWOODCON", "AUSTRAL", "AUSTWHEAT", "PANSTONE", "CEMENCO", "CEMENCOSAIL", "BRITCON", "FERTICON", "GENCON".

LIABILITY FOR CARGO CLAIMS UNDER THE NEW YORK PRODUCE EXCHANGE FORM OF CHARTER

Under the New York Produce Exchange form of Charter (the "N.Y.P.E. Charter"), which is frequently used by Members engaged in the dry cargo trade, liability as between Owners and Charterers for cargo claims is often far from clear.

To avoid protracted and costly litigation/arbitration and with a view to formulating a speedy and fair method of resolving liability in such cases, the undersigned P&I Clubs have entered into an Agreement (The Inter-Club New York Produce Exchange Agreement hereinafter referred to as the " Agreement") whereby they have undertaken to recommend to their Members that, as between Owners and Charterers, liability for cargo claims under N.Y.P.E. Charters entered into after the 20th February 1970, shall be apportioned in the following manner:

Claims for loss of or damage to cargo due to unseaworthiness	100%	Owners
Claims for damage due to bad stowage or handling, including slackage/ullage	100%	Charterers
Claims for short delivery, including pilferage, and overcarriage	50%	Owners
	50%	Charterers

The Agreement does not apply where the cargo responsibility clauses in the N.Y.P.E. Charter have been amended so as to make the liability, as between Owners and Charterers, for cargo claims clear. In such cases cargo claims will be dealt with in accordance with the Charter terms. The incorporation of a Clause Paramount embodying the Hague Rules and/or the Berth Standard of Average Clause (otherwise known as the General Standard of Claim Clause) does not by itself make the Agreement inoperative.

Where the words "cargo claims" have been added to Clause 26 the Agreement does not apply and in the absence of any other material amendment to the N.Y.P.E. Charter, such claims fall to Owners' account. Where the only material amendment is the addition of the words "and responsibility" with reference to the words "under the supervision" in Clause 8 the above formula applies save that in respect of claims for damage due to bad stowage or handling, including slackage/ullage, such claims shall be borne 50% by Owners and 50% by Charterers.

Members who are in any doubt as to whether the Agreement applies or who have any query regarding the N.Y.P.E. Charter, should consult their P&I Club.

CARRIAGE OF NUCLEAR MATERIAL ON BEHALF OF THE UNITED KINGDOM ATOMIC ENERGY AUTHORITY

1. As Members will be aware, nuclear material when carried by sea falls into four classes:
   (i) Natural uranium and thorium ores, concentrates and metals; and mineral resides produced by the processing of such ores.
   (ii) Radioisotopes.
   (iii) Fissile material.
   (iv) Irradiated nuclear fuel and radioactive waste.
   (For further details relating to the above classes, see Circular 1555 dated 23rd June 1960.)

2. This classification was evolved after discussion with representatives of the United Kingdom Atomic Energy Authority (the A.E.A.) and, in the result, it was agreed that the P&I Clubs would provide cover in respect of any liability arising during the carriage of nuclear material falling under classes (i) and (ii), whereas the A.E.A. undertook to provide appropriate indemnities to individual Shipowners who carried A.E.A. consignments of Class (iii) or (iv) materials.

3. This allocation of liability was intended to anticipate the eventual requirements of the O.E.C.D. (Paris) Convention on Third Party liability which, in 1960, was still under discussion. This Convention has now been ratified by the U.K., Belgium, France, Spain, Sweden and Turkey and is now in force for those countries. Its provisions are reflected in the United Kingdom Nuclear Installations Act of 1965 which came into force on 1st December 1965. Some minor amendments were introduced and a raising of the limit of liability in respect of claims arising in non-relevant countries was made by the United Kingdom Nuclear Installations Act, 1969.

4. Particular attention is drawn to the following provisions of the principal Act:

   (a) Third Party liability for any occurrence involving "nuclear matter" (as defined) is channelled back to the Operator of a nuclear installation. Third Party liability is imposed on the Operator where there is an "occurrence" in the course of carriage of nuclear matter other than "Excepted Matter" (Section 7 (2)(b) and (c) and Section 8 covering the A.E.A.). The carrier is *not* liable.

   (b) The liability of any U.K. Operator to pay compensation in respect of any one occurrence is limited to £5m (Section 16(1)).

   (c) The Act does *not* impose liability on the Operator in respect of nuclear injury or damage occurring within the territorial limits of any State which has not ratified the Paris Convention ("non-relevant" territory), other than for damage to British ships or aircraft or injury to persons or damage to property on board such ships or aircraft (Section 13(2)).

(d) Where nuclear injury or damage occurs in a "non-relevant" territory and a Shipowner whose principal place of business is in a "relevant" territory is held directly liable, he has the right to recover from the Operator up to £5m (Section 13(5)).

(e) When nuclear matter, other than "excepted matter" is carried, the Operator must issue a Certificate of Financial Security (Nuclear Matter Transport Certificate) to the carrier before the carriage is begun (Section 21(3)).

5. During the last two years discussions have taken place between representatives of the A.E.A., the Chamber of Shipping of the United Kingdom and the P&I Clubs in order that the existing arrangements may be adapted to comply with the provisions of the United Kingdom Nuclear Installations Acts.

6. Following the coming into force of these Acts, two particular matters required attention:

(1) To reclassify nuclear substances into two categories ("nuclear matter" other than "excepted matter", and "excepted matter") as specified in the Act. (*Note:* Broadly speaking, Classes (iii) and (iv) above fall within the "nuclear matter" other than "excepted matter" category and Classes (i) and (ii) fall within the "excepted matter" category.) (See Appendix II attached.)

(2) To renegotiate the present Indemnity given by the A.E.A. (*Note:* The present Indemnity is issued for *each* shipment of Class (iii) or (iv) material. This was necessary in order to protect the carrier in respect of any liability which, before ratification of the Paris Convention might fall on him. Under the Paris Convention and the United Kingdom Nuclear Installations Act, the A.E.A. is bound to provide the carrier with a Certificate of Financial Security (Nuclear Matter Transport Certificate) in respect of each shipment of nuclear matter other than excepted matter (as defined) for which they are liable in circumstances covered by the Act. The Certificate sets out the name of the Operator liable and specifies the amount of the fund available for third party claims at £5m. Where, however, a nuclear occurrence takes place in circumstances which are not covered by the Paris Convention and the Act, for example, in the territorial waters of a country which has not ratified the Convention, a Shipowner could be made liable in a sum exceeding £5m. Although, under Section 13(5), he would be able to recover up to £5m, he could not recover the excess of this sum. It is for this reason that an Indemnity is required from the A.E.A.)

7. As regards (1) above, the Rules of the undersigned Associations give the Committees and/or Directors discretion to permit the carriage of such nuclear substances as they consider justified. After the most exhaustive international discussions, it has been concluded that Aexcepted matter≅

is innocuous and the A.E.A. is not liable under the Act in respect of its carriage. In these circumstances, the Committees and/or Directors have agreed that cover should be extended to all substances falling under the category of "excepted matter".

8. As regards (2) above, it should be particularly noted that, with effect from 1st September 1969, individual indemnities will not be issued. Such a procedure is inappropriate in view of the provisions of the United Kingdom Nuclear Installations Act and, instead, an "umbrella" indemnity has been negotiated with the A.E.A. under which Shipowners will be indemnified (up to a maximum of £50m per occurrence) in respect of any claim for which they may be found liable under the law of any country which has not ratified the Paris Convention. It is not thought necessary to comment in detail on the terms of this general indemnity which has been drafted in close consultation with representatives of the Clubs. Members should, however, be assured that the indemnity given by the A.E.A. follows, in general, the provisions of the current indemnities and provides proper safeguards for Shipowners who carry nuclear matter. It should, in particular, be stated that the A.E.A. undertakes to indemnify any carrier (which term includes the Owner, Charterer, Operator, Manager or Master of a ship) up to a maximum of £50m in respect of claims, damage or injury as follows:
   (i) Any claim made on the carrier under the law of a country which is not a "relevant" territory.
   (ii) Any claim made on the carrier by any person under the terms of a sub-indemnity given by the carrier necessarily and in the normal course of business, where such other person had incurred liability under the law of a country which is a non-relevant territory.
   (iii) Any damage to the means of transport or injury or damage incurred by persons or property on board the means of transport.
9. It will be noted (see (ii) above) that the necessity for carriers to give indemnities to stevedores, master porters, harbour authorities, etc. has been recognised. Furthermore, since it is conceivable that ship agents and crew members might be used in non-relevant territories, the A.E.A. has agreed that, where necessary, the sub-indemnity forms may be adapted appropriately to cover such persons.
10. The procedure to be followed when any nuclear substance is carried for the A.E.A. will now be simplified. It will no longer be necessary, as heretofore, for Shipowners to ascertain the nature of the substance, to decide upon its classification and (in appropriate cases) to obtain an indemnity from the A.E.A. In future, whenever "nuclear material", other than "excepted matter", is to be carried for the A.E.A., whether in a British or a foreign flag ship, the Shipowner will receive a Certificate of Financial Security (Nuclear Matter Transport Certificate), endorsed to show that the nuclear matter described in the Certificate is covered by A.E.A.'s indemnity when the transport of the consignment is within the territorial limits of a "non-relevant" country. On the issue of this

Certificate the Shipowner will automatically be covered by the Indemnity and the only action required is for the Shipowner to issue sub-indemnities where these are given "necessarily and in the normal course of business". It should be unnecessary to give indemnities to port authorities, stevedores or other persons in countries which have ratified the Paris Convention, however, because the laws of these countries impose absolute liability on the Operator in accordance with the provisions of the Convention. Furthermore, the Certificate of Financial Security together with the endorsement should provide evidence acceptable to foreign authorities both in "relevant" and "non-relevant" countries that adequate funds will be available for compensation to third parties in the event of an occurrence during the period of the maritime carriage. If no Certificate of Financial Security (Nuclear Matter Transport Certificate) is received, the Shipowner will be entitled to assume that the nuclear substance which he is to carry is "excepted matter" and that any liability which may arise, as a result of its carriage, will be covered by his P&I Club.

11. However, if the A.E.A., through an oversight, fails to issue a Certificate of Financial Security when it is required to do so, or if one is issued but not received by the Shipowner, the A.E.A. will remain liable under the Nuclear Installations Act or the indemnity for any nuclear occurrence arising during the course of carriage.
12. It is thought unnecessary to attach copies of the revised Indemnity and sub-indemnities to this letter, which is merely for general information. If, however, it is anticipated by any Member that he may carry nuclear matter for the A.E.A. in the future, application should be made for such documents.
13. It should be stressed that the arrangements set out above relate only to the carriage of nuclear material for the United Kingdom Atomic Energy Authority. Where nuclear material is carried for any other authority, Owners should ensure that they safeguard their position by obtaining adequate indemnities from the authority concerned.
14. In conclusion, it is thought that your attention should be drawn to the existing wording of the nuclear exclusion clause which is commonly inserted in Charterparties and which is reproduced in Appendix III, attached. Now that nuclear material has been reclassified into two classes, namely "Nuclear Matter" and "Excepted Matter", the Documentary Committee of the Chamber of Shipping of the United Kingdom is considering the advisability of redrafting the existing wording of the clause.

LETTERS OF INDEMNITY - SHIPMENTS OF STEEL FROM JAPAN

We refer to our Circulars, 1588 of 22nd October 1963 and 1593 of 28th February 1964, entitled "Letters of Indemnity".

During 1964, the Associations learned that in Japan, where damaged cargo was presented for shipment, instead of bills of lading being claused appropriately, clean bills were on occasions issued in exchange for letters of indemnity, although the Associations' lawyers have advised that in Japan letters of indemnity are almost certainly legally unenforceable.

On 2nd November, therefore, the Associations sent a letter to all ships' agents in Japan warning them that if letters of indemnity were accepted with the carrier's approval, the ships' P&I cover was probably prejudiced, and if letters were accepted without the carrier's approval, the agents would probably be personally liable to indemnify the carrier against cargo claims that could have been avoided had the bills been properly claused.

Subsequently a number of problems have arisen in relation to vessels chartered by American and Japanese concerns to carry steel products from Japan on the Gencon and New York Produce Exchange forms of Charterparty. Despite the fact that the relevant mate's receipts had been claused to record damage at the time of shipment, clean bills of lading have been issued on the instructions of Charterers, who rely on certain additional clauses in the Charterparties. In the case of time chartered ships, the bills were signed by Charterers' agents, to whom the Masters had delegated authority to sign bills of lading on their behalf. Indeed, the agents continued to sign clean bills of lading, even though the Masters had revoked that authority once they became aware that the clauses on the mate's receipts were not being reproduced in the bills. The Associations' American lawyers have advised that in these circumstances the bills, once negotiated to an innocent third party, may well be binding on the Shipowner, and on the vessel's arrival in the United States substantial security had to be given to avoid their arrest by consignees, who, although holding clean bills, found their cargo damaged.

We accordingly recommend that in no case should Charters for this trade authorise the Charterers or their agents to sign bills of lading, even if qualified by the words "In accordance with mate's receipts", and Masters should be specifically instructed that they are either to sign the bills themselves, or authorise Owners' protecting agents to sign on their behalf. We further suggest that advance notice of the vessel's arrival in Japan be given to the relevant Association, so that arrangements can be made for a surveyor to attend, where necessary, to assist the vessel's officers in clausing the mate's receipts in accordance with the recommendations of our Circular of 28th February 1964.

LIMITATION OF LIABILITY - FAULT AND PRIVITY OF OWNERS

On 23rd July 1964 we drew attention to a judgment of the Admiralty Court in London in which the Owners of a colliding vessel were denied the right to limit their liability on the ground that they had not personally instilled into their Master the necessity of strict compliance with the Collision Regulations when navigating with radar in reduced visibility.

The Owners appealed against this decision, but the Court of Appeal has recently dismissed the appeal and confirmed the decision of the Admiralty Court.

The evidence showed that the vessel in question approached the entrance to the River Mersey in thick fog and at full speed with her radar working but not continuously manned, and collided with another ship which was at anchor. The Master admitted that had it not been that he had radar he would not have tried to enter the Mersey at all because of the dense fog. The evidence further showed that regular examination of the logs would have indicated that this Master habitually navigated at full speed in circumstances of reduced visibility, but the Owners themselves had failed to appreciate this or to take any steps to instil upon the Master the necessity for strict observance of the Collision Regulations and the proper use of radar. Their failures in these respects amounted to "actual fault" and disentitled them to limitation of liability.

These judgments emphasise the obligation resting upon Owners *personally* to ensure that their instructions in regard to safe navigation are fully observed, and that Masters and navigating officers are thoroughly conversant with the use of radar equipment.

SMUGGLING IN INDIA

Section 115(1)(a) of the Indian Customs Act 1962, provides as follows:

> "The following conveyances shall be liable to confiscation:
>
> (a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;"

We have recently been advised by our Calcutta lawyers that the Calcutta Customs Authorities frequently find "cavities" or "cutaways" in panelling (over bulkheads) in cabins which are hidden behind furniture and fittings, etc., and, in pursuance of their power to levy fines in lieu of confiscation, fines of about Rs.5,000 are regularly imposed, even where such cavities or cutaways are empty. We are informed that there have been several recent cases where cavities have been found by the Customs Officer simply detaching the back piece of settees or sofas in cabins.

Our lawyers have also advised us that it is the practice of Customs Officers, whenever they find these cavities or other hiding places which could be used for smuggling purposes, to ask the occupant of the cabin or the person in charge of the particular compartment concerned whether instructions had been issued by the Owners or Master of the vessel for all officers and crew members to search their own cabins or compartments for such cavities or hiding places or other unusual or irregular tampering with the normal structure of the cabin or compartment and to report to the Master the existence of any such cavities or hiding places, etc. If no such instructions have been issued, the Customs generally regard the Owners and the Master as failing to take proper anti-smuggling precautions and the risk of additional Customs fines is consequently increased.

Our lawyers therefore advise that appropriate instructions should be issued without delay by Owners or their Masters to all their officers and crew and that each officer and crew member should acknowledge receipt in writing of such instructions. Our lawyers also emphasise that such instructions should also be given to any officer or crew member who joins the vessel subsequent to the original issue of the instructions to the existing officers and crew. There may be certain crew members who are unable to read or write or who for any other reason are unable to acknowledge receipt in writing of the instructions or to confirm in writing that a thorough search has been made, etc. in accordance with the form set out in the instructions. Where this is the case it may be necessary for special Notices to be printed in English and the different languages or dialects of the crew members. The Notices could then be placed on Notice Boards in the crew's Messes and read out by an officer or other responsible person to the particular crew members concerned at the time of signing on.

In addition to these instructions, Masters should arrange with the senior officers for "spot checks" to be made from time to time for cavities or hiding

places and contraband, and for the results of these checks, whether positive or negative, to be recorded in the ship's Log Book.

Whenever a cavity or hiding place is discovered, the Master should have it effectively sealed as soon as possible and record both the finding and the sealing in the Log Book. Such cavity or hiding place does not require to be reported to the Indian Customs Authorities. A permanent repair (if appropriate) can be made at a later date and recorded in the Log Book. Cavities or hiding places found in Port by the Customs Authorities should be similarly effectively sealed and logged as soon as the vessel leaves the port.

We recommend that as regards the actual instructions which should be issued as part of their anti-smuggling precautions by Owners of vessels that may call at Indian ports to the Masters, officers and members of the crew of their vessels, these should be on the following lines:

ANTI-SMUGGLING PRECAUTIONS

The existence on board vessels of cavities or hiding places which could be used for concealing goods, and which are made by any interference or tampering with or alteration to/adaptation of the normal structure of the vessel and her fixtures and fittings constitutes a serious offence under Indian Customs Laws.

A common type of cavity or hiding place is the space between a bulkhead and the cabin or compartment panelling where a section of the latter has been cut open to give access to the space, the cutaway portion being hidden behind cabin fittings or furniture, etc.

All officers and crew members are therefore personally required to thoroughly inspect their own cabins or compartments and to confirm to the Master on the attached form that a thorough search has been made and to state whether or not any cavity or hiding place or other suspicious form of interference or tampering with or any alteration or adaptation of the normal structure of the cabin or compartment exists. All officers and members of the crew must in any event report to the Master any such non-operational cavities, hiding places or other suspicious alterations, adaptations, etc., and also any contraband, observed by them at any time in any part of the vessel.

Cabin/Compartments .....

Occupants .....

"I/We have received the Master's Instruction No. ..... and state that the above cabin/compartment has been thoroughly searched for smuggling cavities/hiding places or other suspicious tampering/interference with or adaptations/alterations of the normal structure of the cabin/compartment and its furniture, fixtures and fittings and I/We report that

*no cavities/hiding places or other suspicious places were found

*the following were observed:

* Delete as necessary

Dated Signed .....

Rank .....

TANKER TIME CHARTERS

In our Circular 1596 dated 4th June 1964, we mentioned that Esso had been using an Indemnity Clause which also deprived Owners of the right to limit their liability which they would normally have, and that attempts were being made to persuade Esso to insert a provision similar to that agreed to by Shell and BP.

The Clause to which objection was taken in the case of Esso read as follows:

> "Neither the Charterers nor its agents, nor any of its associated or affiliated companies, nor any of their employees shall be responsible for any loss, damage or liability arising from any negligence, incompetence or incapacity of any pilot, longshoreman, or the personnel of any tug or arising from the terms of the Contract of employment thereof or for any unseaworthiness or insufficiency of any tug or tugs, launches, or other craft, the services for which are arranged by the Charterer, and the Owner agrees to indemnify and hold Charterer harmless against any and all such consequences."

We are pleased to be able to report that Esso have now agreed that in any future Charters, this Clause will be deleted, and replaced by an amended Clause similarly worded, but with the addition at the end of the following words:

> "but such indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves arranged for such pilots, tugboats or stevedores."

Esso have also agreed that if any existing Charters contain the objectionable clause, they will, on application of individual Owners amend these Charters by the insertion of the new agreed wording.

Owners are advised to examine existing and future Charters with Esso, in order to ensure that they are in the form now agreed.

TANKER TIME CHARTERS

It is normal that Time Charters should specify that Charterers are to provide and pay for tugs, pilots and stevedores. Recently it came to the notice of the Managers that Shell in their printed form of Time Charters, "Shelltime", " Shelltime 2" and "Shelltime 3", and BP in their printed form of Charter, "Beepeetime", had added a provision whereby Owners agreed to accept responsibility for and indemnify the Charterers against all claims and liabilities whatsoever arising out of the employment of tugs, pilots and stevedores.

The serious effect of this provision was that the Owner, in the event of a claim by the Charterers, would lose the right to limit his liability which he would normally have, because the Limitation Laws do not apply to contracts of indemnity.

As a result of representations, both these Companies have agreed to their Charters being amended so as to provide that Owners' liability shall not exceed the amount to which they would have been entitled to limit their liability if they had employed or arranged pilots, tugboats or stevedores themselves.

Since this provision has to be inserted in Charters, differently framed, the wording of the alteration agreed with the two Companies differs slightly. The amendment to be made to "Shelltime", "Shelltime 2" and "Shelltime 3" Charters is to alter the second paragraph of Clause 13 to read as set out below, and the amendment of the "Beepeetime" Charter is to alter the first paragraph of Clause 19 of that Charter to read as also set out below.

The agreement relates both to existing and to future Charters, and Owners who have ships chartered on these forms of Charter should approach the Charterers so as to ensure that the necessary amendment is made.

The Association has further agreed that if there are any ships entered in the Association which are still running under Shell's 1924 form of Charter, or under BP's earlier forms of Charter, then so far as the Association is concerned, these Charters will be treated as though they had been similarly amended, but it will not be necessary for Owners to approach Charterers on the matter.

Esso have also been inserting in their Time Charters a typewritten Clause which is open to the same objection. Attempts are being made to persuade them to insert a provision similar to that agreed to by Shell and BP but in the meantime Owners are warned of the serious risks they are running if they agree to an Indemnity Clause without any limitation at all.

"**Shelltime", "Shelltime 2" and "Shelltime 3" - Clause 13.**

> "Stevedores when required shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the Master, who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents, against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the

employment of pilots, tugboats or stevedores who although employed by Charterers shall be deemed to be the servants and in the service of Owners and under their instructions, **but such indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats or stevedores**."

"**Beepeetime" - Clause 19.**

"Charterers shall ... provide and/or pay for ... (4) towage, pilotage and stevedoring, save that Owners shall remain responsible for proper stowage which must be controlled by the Master who shall keep strict account of all cargo loaded and discharged, and save that Owners hereby accept responsibility for and indemnify Charterers, their servants and agents against all claims, damages, liabilities and obligations whatsoever which may arise out of **any towage, pilotage and stevedoring as** aforesaid, **whether** such claim, damage, liability or obligation arises under conditions imposed by the party rendering the service **or otherwise. Owners' liability under this clause shall not exceed the amount to which Owners would have been entitled to limit their liability if the arrangements for towage, pilotage and stevedoring had been made by the Owners themselves**."

STEVEDORE OR GRAB DAMAGE

Stevedore or grab damage frequently occurs to holds and ceilings, and also to bulkheads and shaft tunnels during loading or discharging operations.

In order to prevent this or, if necessary, to enable claims to be made against the parties responsible, the following precautions should be taken:

(1) The officer on watch should keep a close eye on loading and discharging operations, and stop any "rough work".

(2) A thorough inspection of the holds should be made before loading and immediately after discharge, if possible in company with the Chief Stevedore, or other person responsible for the operations.

(3) Written notice of any damage should be given to such person, and, if possible, an admission should be obtained from him by obtaining his signature to a statement of the damage.

In some cases, Charters contain a clause to the effect that unless stevedore damage is reported by the Master to Charterers or their agents, or to the stevedores, within 24 hours of its occurrence, the Charterers, or stevedores, as the case may be, will not be liable.

It may in fact be quite impossible to specify damage occurring during loading operations, which is immediately obscured by cargo. If, however, there appears to have been any "rough work" during such operations, the Master should write to the Charterers' agents, or to the stevedores, in the following or similar terms, **within the period specified in the Charter:**

> "In view of the way in which the cargo has been (is being) loaded on board, I anticipate that damage, which under the circumstances I cannot specify at present, may have been done to my ship. You will, however, be notified of this in further detail as soon as possible after discharge."

In the case of Time Charters, it is usual for joint surveys to be held when the ship comes on-hire and off-hire, at the beginning and end of the service. In this way, persuasive evidence is established of the damage sustained by the ship during performance of the Time Charter.

If the Charterers, or stevedores, cannot be persuaded to join in the surveys, the Owners should hold their own surveys and thereby establish *prima facie* evidence of the vessel's condition on delivery and redelivery. These surveys will not establish how the damage was caused, so it remains essential for the Master to serve written notice whenever damage occurs, on the offending stevedores and the Time Charterers, detailing the nature of the damage and the negligent act that caused it.

It is important that these precautions should be observed, particularly in cases where loading and discharging is by grabs, or where cargoes of scrap metal are carried and, furthermore, under no circumstances should a Master give a letter to say that no damage was done at loading ports, or that stevedore damage has been repaired to his satisfaction, without express authority from his Owners.

LETTERS OF INDEMNITY

With reference to our Circular 1588 dated 22nd October 1963, relating to Letters of Indemnity, experience has since shown that where signs of rust on steel shipments are apparent at the time of shipment, Mates' receipts and bills of lading need not necessarily in all cases be claused with the single word "rusty" as stated in sub-paragraph (c) of that Circular. Some qualification to the word "rusty" may be justifiable in certain circumstances.

In appropriate cases, therefore, it is permissible for any of the following clauses to be used when describing steel shipments which show signs of rust or a similar condition on shipment:

Partly rust stained.
Rust stained.
Rust spots apparent.
Some rust spots apparent.
Rust spots apparent on top sheets.
Some rust spots apparent on top sheets.
Top sheets rusty.
Some top sheets rusty.
Rusty edges.
Some rusty edges.
Rusty ends.
Some rusty ends.
Rust spotted.
Rust and oil spotted.
Wet before shipment.
Wet steel tubes.
Wet bars.
Rust on metal envelopes.
Covered with snow.
Pitted.
Rusty.
Rust with pitting.
Goods in rusty condition.
Edges bent and rusty,
Partly rusty.

When packed sheet iron is shipped the following two clauses may be used:

Covers rusty/wet.
Packing rusty/wet.

It must be emphasised that the clause which is used must accurately describe the apparent condition of the steel shipment and must also come within the clauses as set out above.

Apart from sub-paragraph (c) of our Circular of 22nd October 1963, which is accordingly hereby modified by this Circular, the remainder of that Circular, in particular sub-paragraphs (a) and (b), remains unchanged.

In no case should any reference be made to the degree of rust such as "atmospherically" or "superficially".

LETTERS OF INDEMNITY

There appears to be a growing tendency among Shipowners and Charterers at certain ports, in particular at Antwerp, to accept Letters of Indemnity in return for clean bills of lading covering cargo that is known to be damaged at the time of shipment.

Steel shipments from Antwerp are a case in point. At that port Letters of Indemnity have been accepted by Owners in exchange for clean bills of lading when the cargo is visibly rusty on shipment. On occasions shippers have intimated that they do not object to the bills of lading being claused "atmospherically rusty" or "partially rusty", but in practice it has been found that clauses of this nature provide no protection to the carrier.

The undersigned Associations wish to draw Members' attention to the fact that:

(a) The issuing of clean bills of lading when cargo is known to be damaged is fraudulent and the acceptance of a Letter of Indemnity does not correct the position.

(b) That Members' rights of recovery from the undersigned Associations will be prejudiced in such cases.

(c) If steel shipments are seen to be rusty on shipment, Mates' receipts and bills of lading must be claused with the single word "rusty". Special qualifications to that word "rusty", such as "atmospherically" or "partially", to meet the requirements of shippers are not acceptable.

Similarly, when other goods are known to be damaged a simple statement on Mates' receipts and bills of lading stating the apparent condition must be made.

BILLS OF LADING - EXTENSION OF PROTECTION TO CARRIER'S SERVANTS AND AGENTS

As a result of the recent House of Lord's decision in Scruttons Limited v. Midland Silicones Limited in which it was held that stevedores engaged by the carrier for discharging the vessel were not entitled to rely on the limit of liability of $500 laid down in the U.S. Carriage of Goods by Sea Act, 1936, which was incorporated in the bill of lading, it is recommended that all bills of lading should contain the following Clause:

> **"Exemptions and immunities of all servants and agents of the carrier.** It is hereby expressly agreed that no servant or agent of the carrier (including every independent contractor from time to time employed by the carrier) shall in any circumstances whatsoever be under any liability whatsoever to the shipper, consignee or owner of the goods or to any holder of this bill of lading for any loss, damage or delay on his part whilst acting in the course of or in connection with his employment and, but without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the carrier or to which the carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the carrier acting as aforesaid and for the purpose of all the foregoing provisions of this Clause the carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract in or evidence by this bill of lading."

Where the Association has already approved a similar clause to the above, it will not be necessary for any alteration to be made.

In all cases where Owners enter into Voyage or Time Charterparties it is recommended that, in order to ensure that the above or similar clause is inserted in all bills of lading issued under the Charter, the Charter should contain an express provision setting out the clause recommended above and preceded by the words "All bills of lading issued under this Charterparty shall contain the following clause:".

CARGO CLAIMS - EFFECT ON CLUB COVER OF ALTERATIONS OR ADDITIONS TO STANDARD FORMS OF CHARTERPARTY

We desire to draw the attention of our Members to a tendency, which appears to be increasing, for Charterers to delete from standard forms of Charterparty exceptions from Shipowners' liability which these forms contain and/or to insert clauses in such Charters imposing additional liabilities on Owners and which, in some cases, are absolute, i.e. there is no defence whatever the cause.

Since our Committees have power under Club Rules to reject or reduce any claim to the extent it would not have arisen had the Charterparty been subject to the Hague Rules, we urge Members to examine Charterparties closely and refuse to accept alterations which either deprive them of existing exceptions or impose additional liabilities on them in excess of those under the Hague Rules.

It is not practicable to set out all objectionable alterations or additions that Charterers have made or attempted to make, but the most glaring instance which has come to our knowledge is the deletion from the standard Baltime Charter of all exceptions, with the result that the Owner is liable for any claim for loss of or damage to cargo, even when the loss or damage is caused, for instance by fire, collision, stranding or other perils of the seas.

As examples of other obnoxious alterations, the insertion of one or both of the following clauses may be mentioned:

> "In all cases, the vessel will be held responsible for any damage to the cargo caused by water through ventilators or due to leakage of water from pipes and/or valves and/or tanks on board."
>
> "In all cases Owners to be responsible for the correct delivery of the cargo."

Both these clauses appear to impose an absolute liability, in the one case for damage, and in the other case for shortage, whatever the cause of the damage or shortage.

We appreciate that in these hard times Owners may find it difficult to refuse Charterers' demands, and if any Member finds himself in this difficulty the Managers of his Association will be pleased to advise the Member and, if so desired and considered advisable, endeavour to arrange, at the expense of the Member, market insurance against the additional liabilities imposed lest, in the event of a claim arising, the Member finds himself unable to recover the claim or part of it from the Association.

CARRIAGE OF RADIOACTIVE MATERIALS

The Association's rule relating to the carriage of radioactive material is as follows:

> "No Member shall have any claim arising out of or in consequence of the emission of ionising radiations from or the toxic, explosive or other hazardous properties of nuclear fuels or radioactive products or waste carried in an entered ship, with the exception of radio isotopes which are used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes and are carried as cargo and with such further exceptions as the Committee shall approve of."

Upon the information now received, it appears that nuclear materials presently carried by sea, or likely in the future to be so carried, as cargo fall into the following categories:

1. **Natural uranium** and **thorium ores, concentrates** and **metals**; and **sludges** and "**throw-away wastes" produced by the processing of such ores**

The radioactive content in these substances is in such small concentration that the hazard is no greater than that of common lead.

"Throw-away waste" is the technical term applied to the residue which remains after the process of extracting the metal of uranium or thorium from the ore or concentrates. It is of negligibly slight radioactive capacity and is disposed of by dumping in the sea. It is, however, to be distinguished from the waste which constitutes the end product of a Nuclear Reactor; this is highly radioactive and, therefore, dangerous and falls under CATEGORY 4 below.

2. **Radio Isotopes**

These are concentrated radioactive materials used for scientific research and in medicine, agriculture and industry. For all these purposes radio isotopes are required only in small unit quantities, and indeed 50 units in one package would not produce a surface radiation in excess of that permitted under the British Ministry of Transport Regulations for the carriage of dangerous goods. The most highly radioactive of these substances are those used in teletherapy, mainly for the treatment of cancer; but again the unit quantities have to be small, otherwise they could not safely be handled.

3. **Fissile Materials**

These are artificially produced nuclear substances, such as enriched uranium, uranium 235 and plutonium 239. They are not "irradiated" as is nuclear fuel in a reactor, but under certain conditions are capable of undergoing fission, which is the process by which nuclear energy is liberated.

The main danger from this class of nuclear substances is that, if ingested in the human body, they are highly toxic. This danger would only occur, of course, if the fissile material was (a) to escape from its container and (b) be in such a form that it could be ingested, e.g. a fine powder as opposed to a metal.

In this context it appears that plutonium is usually in the form of a fine powder which, if disseminated in the atmosphere and so inhaled by human beings,

would produce harmful effects. Plutonium, if ingested, settles in the bones and causes bone-cancer.

Certain fissile materials are however also capable, if present in sufficient unit quantity, and in a certain geometrical arrangement, of giving rise to what is termed a "criticality incident", i.e. very intense flashes of ionising radiation which are extremely harmful to persons and can contaminate property. Fissile material of this nature is either transported in strong specially designed containers (in which event the criticality precautions depend essentially upon the container remaining intact during transport) or standard containers are used, but are limited in number in any one consignment to a quantity of fissile material which is considered safe (in which event the safety factor may be diminished if the consignment happens to be adjacent to a similar load on another means of transport).

4. **Irradiated Nuclear Fuel or Waste**

These substances are the end products from Nuclear Reactors. After the nuclear fuel in the Reactor has been utilised to its economic extent for the production of energy it is still highly radioactive and has considerable value in that products such as plutonium can be extracted from it. It has, therefore, to be transported from the Reactor, where its useful life has ceased, to one of the few specially equipped Atomic Stations at which it can be treated. This may, and does often, involve a long ocean carriage.

The maximum credible accident during the carriage of such material could not, according to the Atomic Energy Authority, produce an atomic explosion; but it is admitted that if, as the result of a casualty during transport, irradiated nuclear waste were to be exposed, the radiation would be of such intensity as to cause grave, if not fatal, injury to those in the vicinity and serious contamination of property. This type of nuclear substance is by far the most dangerous of those which are now being transported.

As regards CATEGORY 1, the Committee has approved of the carriage of uranium and thorium ores and physical concentrates, provided that the Member complies with all relevant regulations and recommendations of the British Ministry of Transport as though they applied to vessels of all nationalities and to all ports of loading. Members who wish to carry other materials coming within CATEGORY 1 should request the Managers to obtain the Committee's approval.

CATEGORY 2. The Association has approved of the carriage of radio isotopes of the description stated in our Circular of 17th March 1960.

CATEGORIES 3 and 4. The Committee, as at present advised, will not approve of the carriage of any materials coming within these Categories and since, in respect of these materials, Members have no cover from the Association for nuclear damage, they are strongly advised only to accept them for shipment under an unqualified indemnity from the shippers against any liability for nuclear damage occurring during the transport which the Member may incur. The indemnity should also cover the Member's liability to stevedores and owners and operators of lighters, tugs and cranes and others to whom indemnities are given. Members should assure themselves of the shipper's ability to implement such an indemnity.

As far as the Association is concerned, Indemnities of these types given by Members will have in future, if countersigned by the Association, to contain the following clause:

> "This indemnity shall not apply to any loss or liability of any kind whatsoever and howsoever caused arising out of or in consequence of the emission of ionizing radiation from or the toxic explosive or other hazardous properties of nuclear fuels or radioactive products or waste, unless and to the extent that we shall otherwise specifically agree in writing."

The heavy containers in which irradiated nuclear fuel or waste is carried to installations for processing are returned empty after being cleaned, in order to be refilled. In their empty state they may be accepted for shipment under the Association's cover, but only if they have been certified by the proper Authority to be free of radioactivity.

If Members are in doubt as to the category in which any particular nuclear material offered for shipment falls, the Managers will endeavour to elucidate the question with the assistance of the Atomic Energy Authority, if necessary, but it is hoped that a classified list of nuclear materials likely to be transported by sea will shortly be available.

LIABILITY FOR EQUIPMENT HIRED BY OWNERS

Reference is made to the practice under which Owners hire certain items of equipment such as Wireless Installations, Refrigerators, Echo Sounders, Navigators, etc., on terms which, whilst differing in various aspects, provide in many cases that the hirers are in certain circumstances liable for loss or damage.

Members are reminded that claims for such loss or damage are outside the scope of the P&I cover as being in respect of equipment of the ship, and that hull & machinery underwriters may disclaim liability for loss of or damage to hired equipment unless it is expressly insured.

BOTH TO BLAME COLLISION CLAUSE

On 31st October 1951, a Circular was issued informing Members that the validity of the above Clause was the subject of litigation in the Courts of the United States of America in the case of the *United States of America v. Farr Sugar Corporation and American Spirits Inc. (The "ESSO BELGIUM").*

The Supreme Court of the United States has now decided in the "ESSO BELGIUM" case that the Clause is invalid as being contrary to the public policy of the United States which prohibits a common carrier from contracting out of liability for the negligence of himself or his servants. The carrying vessel in that case was a common carrier, that is to say, her cargo was loaded under a number of bills of lading and she was not under Charter to a single carrier.

The history of the Both to Blame Collision Clause is as follows: The Collision Convention of 1910 provided in effect that where two vessels are to blame for a collision the cargo in ship A can recover its loss from ship B only in proportion to the blame attaching to ship B. This Convention was ratified by all the maritime nations of the world except the United States of America, where if both ships are to blame the loss is always equally divided. Consequently in that country, where two vessels are to blame for a collision the cargo in the carrying ship A though unable to recover any of its loss from the ship (because of the exception of negligent navigation in the contract of carriage) can recover the whole of its loss from ship B, and ship B can in turn recover 50% of this loss from ship A. The Both to Blame Collision Clause was framed in order to entitle ship A to obtain from its cargo reimbursement of the 50% of the cargo claim which ship A had to pay ship B.

Since the recent decision in the "ESSO BELGIUM" case the Both to Blame Collision Clause cannot be enforced in the United States, at any rate where the carrying vessel is a common carrier. It may well be, however, that after liability for the collision has been decided in the USA, claims for an indemnity under the Both to Blame Collision Clause would arise against cargo owners in countries outside the USA; and it is unlikely that the Clause would be held contrary to public policy in those countries.

Even in the United States, if the carrying vessel is not a common carrier, e.g. if she has been chartered to a single Charterer and bills of lading issued under the Charter, it is considered that the recent decision may not apply.

In these circumstances Members are advised to continue to use the Both to Blame Collision Clause and not delete it from any of the documents in which it has hitherto appeared.

In any case in which a Member's liability for damages is increased due to the invalidity of the Clause such increased liability comes within the cover afforded by the P&I Associations.