

2nd May 1997

## **TO ALL MEMBERS**

Dear Sirs,

### **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.

P.T.O.

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

Yours faithfully,

The American Steamship Owners Mutual Protection and Indemnity Association, Inc.  
Assuranceforeningen Gard (Gjensidig)  
Assuranceforeningen Skuld (Gjensidig)  
The Britannia Steam Ship Insurance Association Limited  
The Japan Ship Owners' Mutual Protection and Indemnity Association  
Liverpool and London Steamship Protection and Indemnity Association Limited  
The London Steam-Ship Owners' Mutual Insurance Association Limited  
The Newcastle Protection & Indemnity Association  
The North of England Protecting and Indemnity Association Limited  
The Shipowners' Mutual Protection and Indemnity Association (Luxembourg)  
Skuld Mutual Protection and Indemnity Association (Bermuda) Limited  
The Standard Steamship Owners' Protection and Indemnity Association Limited  
The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited  
The Standard Steamship Owners' Protection and Indemnity Association (Europe) Limited  
The Steamship Mutual Underwriting Association Limited  
The Steamship Mutual Underwriting Association (Bermuda) Limited  
The Steamship Mutual Underwriting Association (Europe) Limited  
Sveriges Angfartygs Assurans Forening  
The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited  
The West of England Ship Owners Mutual Insurance Association (Luxembourg)