

## CLASS 5, THE PROTECTING AND INDEMNITY CLASS

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NOTICE IS HEREBY GIVEN that a SEPARATE MEETING of the MEMBERS OF CLASS 5, THE PROTECTING AND INDEMNITY CLASS, of the Association will be held at the REGISTERED OFFICE of the Association, 50 LEMAN STREET, LONDON, E1 8HQ at 12 noon on WEDNESDAY, 27th JANUARY 1999, or as soon thereafter as the meeting of the Committee called for that day is finished, for the purpose of altering and adding to the Rules.

The following alterations and additions together with such further alterations and additions, if any, as may be proposed will be submitted for adoption with or without modification and with effect from noon G.M.T. on the 20th day of February 1999.

*[New wording is in bold. The explanatory notes in italics will not appear in the actual Rules.]*

### RULE 4 UNREASONABLE CONDUCT

- 4.1 The Committee may reject or reduce any recovery by a Member where in its ~~sole~~ discretion it determines that the Member has not **at any time (whether before, at the time of, during or after any casualty, event or matter liable to give rise to a claim upon the Association)** taken such steps ~~before, at the time of, during or after the incident giving rise to the subject liability, costs or expenses,~~ to protect his interests as the Committee **in its discretion** would have expected an uninsured person acting reasonably in similar circumstances to have taken.
- 4.2 **Without prejudice to the generality of Rule 4.1, a Member must at all times (whether before, at the time of, during or after any casualty, event or matter liable to give rise to a claim upon the Association) take such steps to protect his interests in relation to Date Compliance as the Committee in its discretion would expect an uninsured person acting reasonably in similar circumstances to take. For the purpose of this Rule "Date Compliance" shall mean that, in relation to computers and other equipment or systems for processing, storing or retrieving data, hardware, software, firmware and microprocessors and any equipment which contains or relies upon microprocessors, neither performance nor functioning is adversely affected by dates prior to, during and after the year 2000 and in particular that:**
- (a) no value for current date will cause any interruption in operation;**

- (b) date-based functioning and performance shall behave consistently for dates prior to, during and after the year 2000;
- (c) in all interfaces and data storage, the century in any date shall be specified either explicitly or by unambiguous algorithms or inferencing rules;
- (d) the year 2000 shall be recognised as a leap year.

In the event that a Member commits any breach of this obligation, the Committee may in its discretion reject any claim by the Member against the Association arising directly or indirectly out of such breach, or reduce the sum payable by the Association in respect thereof by such amount as it may determine.

*[Explanation: Minor improvements have been made to the wording of Rule 4.1.*

*Rule 4.2 has been introduced to require Members to behave as prudent uninsureds in relation to the Millennium Bug and similar date-related problems, and to give to the Committee power to reject or reduce claims arising from failure to observe that requirement.]*

## **RULE 9            RISKS COVERED**

### **9.15      Pollution:**

- 9.15.1.5      PROVIDED that, unless the Committee in its sole discretion shall otherwise determine, there shall be no recovery under this Rule in respect of any liabilities, costs and expenses which but for the terms of a charter or contract of employment entered into for the employment of the entered ship would have been allowable in general average adjusted under the unamended York-Antwerp Rules 1994 and would have been recoverable from other parties to the contract.**

*[Explanation: This exclusion from cover of costs which would have been recoverable from cargo interests in general average under the York-Antwerp Rules 1994 if the Member had not conceded the right of recovery by agreeing a charterparty clause which excluded all pollution costs from general average will be introduced by all Group Clubs from 20 February 1999. The Association's Circular No 5:265 refers.]*

### **9.23      Fines:**

9.23.1      Fines imposed by any court, tribunal or authority for:

~~9.23.1.1      Breach of any law or regulation relating to the provision of a safe place or system of work or safe working conditions.~~

9.23.1.2 ~~1~~      Breach of any immigration law or regulations relating to crew members or their wives and children. The PROVISIO in Rule 9.9.3 shall apply to recovery under Rule 9.23.1.2 ~~1~~.

9.23.1.3 ~~2~~      **Smuggling by the Master or crew members, provided that the Member upon becoming aware of the alleged offence immediately notifies the Association.**

9.23.1.4 ~~3~~      **Short-delivery or over-delivery of cargo or failure to comply with any law or regulations relating to declaration or documentation of cargo, but only when the entered ship is covered for cargo risks under Rule 9.19 in which case such fines shall be aggregated with cargo claims for the purposes of applying the cargo**

deductible to the same, and fines under Rule 9.23.1.4 ~~3~~ shall not be subject to any other deductible.

- ~~9.23.1.5~~ ~~Infringement of any law or regulations relating to the construction, adaptation, alteration, fitment or documentation of an entered ship.~~
- 9.23.1.6 ~~4~~ The **accidental** discharge or escape of oil or any polluting substance from an entered ship, but as regards oil only where the entered ship is covered for pollution risks under Rule 9.15.
- 9.23.2 ~~PROVIDED that All other fines shall be recoverable only under Rule 9.28, the Omnibus Rule, and in particular whether in relation thereto or to this Rule 9.23 at the sole discretion of the Committee in its sole discretion may and provided that:~~
- 9.23.2.1 **the Member has satisfied the Committee that he took such steps as appear to the Committee to have been reasonable to avoid the event giving rise to the fine or penalty and**
- 9.23.2.4 ~~2~~ **allow recovery in respect of any fine imposed not on the a Member but on a seaman the Master or crew members** of the entered ship or on any other servant or agent of the Member **shall only be recoverable** in circumstances either where the Member has been compelled by law to pay or reimburse such fine or where the Committee shall determine that it was reasonable for the Member to have paid or reimbursed the same. ~~or to have discharged the fine in order to prevent the arrest of the entered ship or any other ship or property belonging to the Member or in order to secure the release from arrest of any such ship or property;~~
- ~~9.23.2.2~~ ~~refuse recovery to any extent whatever in respect of fines for overloading, disregard of routing regulations, entry into prohibited waters or illegal fishing, or in respect of any other fine incurred in circumstances involving any element of fault and privity on the part of the Member.~~

*[Explanation: 9.23.1.1 and 9.23.1.5 have been deleted as cover for fines for failure to maintain a safe place or system of work or safe working conditions and for infringement of any law or regulations relating to the construction, adaption, alteration, fitment or documentation of an entered ship - otherwise than on a purely discretionary basis - is inconsistent with Rule 8.7 concerning compliance with statutory certification requirements.*

*9.23.2 dealing with fines other than the four categories listed in 9.23.1 has been amended for the purposes of simplification and also to accord more closely with the model rule concerning fines circulated by a Working Group of the International Group and which has already been approved by a number of Clubs.]*

## **RULE 15      LIABILITY EXCLUDED FOR CERTAIN NUCLEAR RISKS**

- 15.1      There shall be no recovery in respect of any ~~liability,~~ **liabilities**, costs ~~or~~ **and** expenses directly or indirectly caused by or contributed to **by** or arising from
- 15.1.1      ionising radiations from, or ~~contamination by radioactivity from any nuclear fuel or any nuclear waste or from the combustion of nuclear fuel;~~
- ~~15.1.2~~ ~~the radioactive, toxic, explosive or other hazardous or contaminating properties of~~
- 15.1.1.1      **any nuclear fuel or any nuclear waste or the combustion of nuclear fuel;**  
**or**
- 15.1.1.2      any nuclear installation, reactor or other nuclear **assembly or nuclear component thereof;** or

15.1.3 2 any weapon of war employing atomic or nuclear fission and/or fusion and/or like reaction or radioactive force or matter,  
**other than liabilities, costs and expenses arising out of carriage of “excepted matter” (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo in an Insured Vessel.**

~~15.2 PROVIDED that the above Rule 15.1 shall not apply to 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 and on such conditions as the Committee may in its sole discretion determine.~~

*[Explanation: This Rule is being amended in order to accord with the exclusion rule in the 1998 Pooling Agreement, which reflects the exclusion wording in the Group’s excess loss reinsurance contract. The Clubs have agreed to move towards identical clauses with effect from 20 February 1999.]*

By Order of the Committee,  
A. BILBROUGH & CO. LTD.  
(Managers)

9 December 1998