

9 December 1998

TO ALL MEMBERS

Dear Sirs

GENERAL AVERAGE - CHARTERPARTY CLAUSES

We refer to our Circular of 2 May 1997 (5:236) advising Members that some tanker charterers were attempting to introduce new clauses which had the effect of restricting Owners' rights to include certain types of pollution costs in General Average incircumstances where those costs would otherwise have been recoverable in accordance with the York Antwerp Rules 1994.

Prior to 1994, the York Antwerp Rules (YAR) allowed the recovery of pollution expenses and liabilities in General Average in a wide range of circumstances. For example, clean-up expenses and the cost of third party pollution damage claims arising out of jettisoning oil to refloat a vessel were usually allowable within General Average.

As a result of increasing reluctance on the part of property underwriters to accept pollution expenses in General Average, there was considerable pressure to exclude all pollution costs from General Average when the York Antwerp Rules were revised in 1994. YAR 94 represents a hard fought compromise between shipowners and property interests. Whilst the cost of pollution clean-up and third party pollution liabilities following a discharge is now generally excluded from General Average under Rule C of YAR 94, the cost of preventive measures incurred prior to a spill is usually allowable. However, YAR 94 also provides that the cost of preventing or minimising environmental damage is recoverable in General Average under Rule (XI)(d) if incurred, inter alia, as a condition of entry into or departure from a port of refuge, **regardless** of whether or not a spill has actually occurred.

Although this erosion of shipowners' entitlement to recover pollution costs in General Average was regrettable, it was considered a justifiable price to pay for the continued existence of YAR as an internationally accepted General Average regime which has served the industry well over the years. For these reasons, our earlier Circular recommended that any further attempts by charterers to erode the YAR 94 position by contract should be firmly resisted.

Since the above Circular was published, a number of charterers have abandoned such clauses and have accepted that pollution costs may be included in General Average to the extent permitted by YAR 94.

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Moreover, all Clubs have agreed that, in view of the participation of the International Group in the discussions which led to the YAR 94 compromise, any attempt to erode this internationally recognised regime should be actively opposed. The additional risks arising from the use of such clauses will therefore be excluded from the Pooling Agreement with effect from 20 February 1999.

An appropriate amendment to the Association's Rules will be circulated to Members shortly, and will be submitted to a Class meeting on 27 January 1999 for adoption, in order to exclude such risks from the normal scope of Club cover from 20 February 1999.

Members who are asked to accept any charterparty clause which attempts to modify the YAR 94 position on pollution costs should contact the Managers for further advice.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)